

STATE OF TEXAS

COUNTY OF TRAVIS

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FIRST AMENDMENT TO THE
"RESTATED COST REIMBURSEMENT
AGREEMENT (WATER) AND SECOND
AMENDMENT TO THE COST
REIMBURSEMENT AGREEMENT
(WASTEWATER)– INDIAN HILLS
AND WHISPER VALLEY SUBDIVISIONS"

THIS FIRST AMENDMENT TO THE "RESTATED COST REIMBURSEMENT AGREEMENT (WATER) AND SECOND AMENDMENT TO THE COST REIMBURSEMENT AGREEMENT (WASTEWATER) – INDIAN HILLS AND WHISPER VALLEY SUBDIVISIONS" ("Amendment") is made and entered into by and between the City of Austin, a Texas municipal corporation ("City") and Club Deal 120 Whisper Valley, Limited Partnership, a Delaware limited partnership ("WV Developer") and Club Deal 116 Indian Hills Tx, Limited Partnership, a Delaware limited partnership ("IH Developer") (collectively or individually as applicable, the WV Developer and IH Developer shall be referred to herein as the "Developer"). For purposes herein, "Party" means the City or the Developer, as the case may be.

I.
RECITALS:

- A. On August 26, 2010, the City Council approved the creation of the Public Improvement Districts ("PIDs") for the Whisper Valley project ("WV Project") and the Indian Hills project ("IH Project"). Each PID was created to provide the Developer a means to fund infrastructure improvements to the respective property. The City and the Developer entered into that certain *Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivision* ("Agreement") on November 1, 2010.
- B. The Agreement contemplated that (i) certain PID bonds would be issued to fund, among other things, water infrastructure and other costs associated with the development of the Projects and (ii) a portion of the PID bond proceeds or PID assessments will be used to reimburse the City for funds paid to the Developer for (a) construction of certain water infrastructure more particularly described in the Agreement, (b) certain soft costs such as design engineering for the construction of certain water and wastewater infrastructure more particularly described in the Agreement, and (c) the CCN Release Fee.
- C. The PID bond structure has changed since the execution of the Agreement and therefore, the Agreement, as currently written, does not accurately describe the types of PID bonds that are anticipated to be issued or how the City will be reimbursed by the Developer for funds paid to the Developer. The new bond structure includes (i) Senior Master PID Bonds and Subordinate Master PID Bonds, which are to be issued up front to fund Line 1 and Line 2 (as well as other improvements); and (ii) Phased PID Bonds, which will be issued as phases of the WV Project and the IH Project are developed in the future, and which will fund internal improvements in the given phases and may refund all or a portion of the Master PID Bonds. A more definite description of the bond structure is contained in the PID Finance Agreements (as defined below).

- D. On even date herewith, the City and WV Developer have executed that certain Whisper Valley Public Improvement District Finance Agreement which, among other things, describes the types of bonds that the City intends to issue for the WV Project. On even date herewith, the City and IH Developer have executed that certain Indian Hills Public Improvement District Finance Agreement which, among other things, describes the types of bonds that the City intends to issue for the IH Project. The Whisper Valley Public Improvement District Finance Agreement and the Indian Hills Public Improvement Finance Agreement shall collectively be referred to herein as the "**PID Finance Agreements**".
- E. The Parties desire to amend the Agreement to, among other things, reflect changes necessitated by the updated PID bond structure.

NOW THEREFORE, in consideration of the mutual covenants of each party set forth below, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and the Developer agree as follows:

II. AGREEMENT

- A. Section 2.03(a) of the Agreement is hereby deleted in its entirety and replaced with the following, to add a specific date for initiating the design of certain infrastructure:

"(a) The Developer will procure design phase engineering services to produce the final design, plans and specifications for Line 1 and Line 2 no later than July 1, 2012 (the "**Approval Date**"). The Developer will complete the design of Line 1 and Line 2, in accordance with City policies and procedures, within 12 months of the Approval Date."

- B. Section 2.03(c) of the Agreement is hereby deleted in its entirety and replaced with the following, to add 100 LUEs to the original 1,000 and 1,500 LUE amounts:

"(c) The WV Developer and the City shall mutually agree on whether to construct Line 5 or Line 6. Such decision shall be made prior to the first 1,100 LUEs being provided retail water service in the WV Property by the City from Line 2 ("**Decision Date**"). If Line 5 is chosen as the Alternative Line, the WV Developer will procure design phase engineering services to produce the final design, plans and specifications for the Alternative Line within 30 days after the Decision Date. The WV Developer will complete the design of the Alternative Line in accordance with City policies and procedures, within 12 months of procuring design phase engineering services for the Alternative Line. If Line 6 is chosen as the Alternative Line, the WV Developer will procure design phase engineering services to produce the final design, plans and specifications for Line 6A within 30 days after the Decision Date. The WV Developer will complete the design of Line 6A in accordance with City policies and procedures, within 12 months of procuring design phase engineering services for Line 6A. Once 1,600 LUEs are being provided retail water service by the City to the WV Property ("**Line 6B Trigger**"), the WV Developer will procure design phase engineering services to produce the final design, plans and specifications for Line 6B within 30 days after the Line 6B Trigger. The WV Developer will complete the design of Line 6B in

accordance with City policies and procedures, within 12 months of procuring design phase engineering services for Line 6B. Otherwise, if a joint decision by the City and the WV Developer has not been made by the Decision Date, then the WV Developer shall proceed with the design and construction of Line 5 unless a Party has issued a Default Notice related to the Decision Date.”

- C. The following is hereby added as a new Section 2.13(d) to the Agreement, to address changes to posting Fiscal Security:

“(d) Notwithstanding anything to the contrary contained herein, with respect to components of the Water Project funded by the Senior Master PID Bonds or the Subordinate Master PID Bonds, if there are funds in a segregated account within the Project Fund sufficient to pay for the completion of a given component, as reasonably determined by the City, it is intended that Developer not be required to post Fiscal Security for the applicable component of the Water Project. For example, if a separate account is formed within the Subordinate Master PID Bond Project Fund for Line 2 (which fully funds the reimbursement eligible cost of Line 2), then Fiscal Security will not be required for Line 2.

The estimated costs for the components of the Water Project funded by the Senior Master PID Bonds or the Subordinate Master PID Bonds shall be determined prior to placement of funds in a segregated account within the Project Fund for the applicable component. If at any time (including if any shortfall becomes evident after construction bids are received) it is reasonably determined by the City that (i) there are insufficient funds contained in a segregated account within the Project Fund to complete the construction of the given component for which the segregated account was established, and (ii) there are no additional bond proceeds designated for the Project Fund available to cover the shortfall between the funds contained in the segregated account for applicable component and the bidded cost to complete the construction of the applicable component, then the Developer agrees to post Fiscal Security, in accordance with the Agreement and City policies, for such shortfall amount prior to the City’s deadline. Until such time that adequate Fiscal Security is posted, the City may withhold, at its discretion, any advances of any bond proceeds to the Developer by the Trustee (as defined in the PID Finance Agreements).”

- D. Section 2.15 of the Agreement is hereby deleted in its entirety and replaced with the following, to provide consistency between default provisions, and to revise the City’s construction options:

“If the Developer fails or refuses to timely complete the construction of a given component of the Water Project by the required completion date (subject to Force Majeure and delays caused by the City, including without limitation delays in approving plans and issuing permits), as provided in Section 7.02, the City shall provide the Developer with written notice of said default and provide thirty (30) days to cure said default; provided, however, if the default cannot reasonably be cured in 30 days, the Developer shall have such additional time as is reasonably necessary to cure as long as the Developer commences the cure within 30 days and diligently pursues the same to completion. If the Developer has still not completed the

applicable component of the Water Project after the notice and cure periods provided for above, the City shall either:

- i. Assume the construction management role and direct the completion of the applicable component of the Water Project so that it qualifies for the agreed upon Reimbursement Amount specified herein, in which event the Reimbursement Amount will be paid by the City to the Trustee (as defined in the PID Finance Agreements) and will be used by the Trustee to repay the applicable PID Bonds; or
- ii. Assume the construction management role and direct the closeout of the applicable component of the Water Project so that such component qualifies for a partial reimbursement payment pursuant to Section 4.04(b) (for the work completed) in which event the partial reimbursement amount payment will be funded to the Trustee and together with unspent applicable PID Bond proceeds in the Project Fund (as defined in the PID Finance Agreements), will be used to fund the repayment of the applicable PID Bonds.

In the event the City assumes the construction management role for a given component of the Water Project (as provided above) then the Developer agrees as follows:

- i. the City may draw down funds from the Project Fund to complete the component of the Water Project in question,
- ii. all construction contracts, related completion bonds, warranties, plans and specifications, designs, easements, and improvements acquired, produced, or installed in connection with completing such given component of the Water Project by the Developer or its engineers, contractors, or other consultants, and all other personal property and rights associated with the applicable component of the Water Project, will automatically without further action by the Developer become the property of the City,
- iii. the Developer will automatically forgo and release any claims or rights to those items listed in (ii) above, and
- iv. the City may draw down on any Fiscal Security posted to complete such component of the Water Project."

E. The second paragraph of Section 4.01(a) of the Agreement is hereby deleted in its entirety to remove a requirement related to the platting of LUEs and the remainder of Section 4.01(a) remains in place, so that Section 4.01(a) is as follows:

- "(a) If the City's final acceptance of Line 1 or Line 2 occurs prior to October 1, 2015, then the City and the Developer agree that the Reimbursement Amount for that particular line shall be paid in the following manner: 50% of the Reimbursement Amount for that particular line shall be paid no later than October 31, 2015, and the remaining amount no later than October 31, 2016. If the City's final acceptance of Line 1, Line 2, or the Alternative Line occurs after October 1, 2015, then the City and the Developer agree that 50% of the Reimbursement Amount for that particular line shall be paid within 90 days after the City's final acceptance of such infrastructure and the remainder of

the Reimbursement Amount for that line shall be paid one year after the date of the City's final acceptance of that line. The City agrees that such acceptance shall not be unreasonably withheld, conditioned, or delayed."

- F. Sections 4.02 (a)-(f) of the Agreement are hereby deleted in their entirety and replaced with the following, to replace one of the mechanisms to repay the City:

"4.02 City Repaid by Developer.

- (a) The WV Developer shall repay the City that portion of the Maximum Reimbursement Amount that is associated with the WW Supplemental Costs, CCN Release Fee, the WV Developer's share (i.e. 75%) of the non-oversizing portion of Line 1, and the non-oversizing portion of Line 2 (the **"WV First Repayment Amount"**). The WV Developer shall also repay the City that portion of the Maximum Reimbursement Amount that is associated with the non-oversizing portion of the Alternative Line (**"Alternative Line Repayment Amount"**). The IH Developer shall repay the City that portion of the Maximum Reimbursement Amount that is associated with the IH Developer's share (i.e. 25%) of the non-oversizing portion of Line 1 (the **"IH Repayment Amount"**). In other words, the terms **"WV First Repayment Amount"**, **"Alternative Line Repayment Amount"**, and **"IH Repayment Amount"**, as applicable, shall mean the maximum amount that would be repaid to the City by the applicable Developer assuming the Developer and the Trustee, in combination, have been paid the entire Maximum Reimbursement Amount.

The Developer agrees that once the exact dollar amounts (the **"Agreed Upon Amounts"**) for the IH Repayment Amount, Alternative Line Repayment Amount, and each component of the WV First Repayment Amount, are finalized by the Developer and approved by the City, such Agreed Upon Amounts shall be repaid to the City in accordance with the terms of this Agreement. The Developer shall have no further right to modify the Agreed Upon Amounts and shall not obtain or use bond proceeds to fund any costs exceeding the Agreed Upon Amounts. The Developer (as provided for in this paragraph) shall use its own funding source to pay for any costs exceeding the Agreed Upon Amounts.

The City will not be repaid for any portion of the Water Project that the City elected to oversize. The Developer shall repay the City through funds available to the Developer in addition to those obtained through the sale of property as discussed in Section 4.02.

(b) Definitions.

- i. The **"SSA"** (sales set aside) shall be an amount equal to:
1. the net proceeds received by the Developer on a Third Party Sale multiplied by fifteen percent (15%) (**"WV Bond Share"** for those Senior Master PID Bonds related to the WV Project, **"IH Bond Share"** for those Senior Master PID Bonds related to the IH Project, and collectively as the **"Bond Share"**) until the Senior Master PID Bonds for the applicable Project are no longer outstanding. When those Senior Master PID Bonds are

no longer outstanding, any remaining amount of funds in the Bond Share shall be transferred to the City Share funds for repayments to the City; plus

2. the net proceeds received by the Developer on a Third Party Sale multiplied by twenty percent (20%) ("**WV City Share**" for those Third Party Sales related to the WV Project (which includes the CCN Release Fee), and "**IH City Share**" for those Third Party Sales related to the IH Project, and collectively as the "**City Share**") until the WV First Repayment Amount and IH Repayment Amount for the Developer has been paid in full to the City or the Maximum Outstanding Balance, as defined herein (excluding the Alternative Line portion of the WV Maximum Outstanding Balance) for the Developer is held in escrow by the Escrow Agent (as hereinafter defined) for the benefit of the City. Thereafter, the City Share shall be reduced to fifteen percent (15%) of the net proceeds received by the Developer on a Third Party Sale until the Alternative Line Repayment Amount is paid in full to the City or the WV Maximum Outstanding Balance related to the Alternative Line is held in escrow.

For example, initially, the SSA shall be equal to thirty five percent (35%). Once the Senior Master PID Bonds are no longer outstanding, then the SSA shall be reduced to 20%. At such time as the WV First Repayment Amount and the IH Repayment Amount are fully paid to the City or the Maximum Outstanding Balance (excluding the Alternative Line portion of the WV Maximum Outstanding Balance) is held in escrow, then the SSA shall equal 15%.

- ii. "**Third Party Sale**" shall mean the initial sale, conveyance, or transfer of any portion of the Property by the Developer to any person or entity. A transfer or conveyance of all of the remaining portion of the Property to (A) an affiliate of Developer which does not involve the use of any amount of cash ("**Affiliate**"), or (B) a joint venture arrangement of which the Developer (or an Affiliate of Developer) is a part and which does not involve the use of any amount of cash ("**Joint Venture**"), shall not be considered a Third Party Sale. A transfer or conveyance of the remaining portion of the Property to (C) a Designated Successor or Assign (as defined in Section 7.16(c) below) shall not be considered a Third Party Sale. If the Developer has transferred or conveyed all of the remaining portion of the Property to an Affiliate or Joint Venture, then the term "Developer" in this Agreement shall be deemed to be the succeeding Affiliate or Joint Venture. If the condition of either (A), (B), or (C) applies to such transfer or conveyance, then the Developer shall not be required to place the SSA into escrow for that transaction, but (subject to the other terms and provisions hereof) the SSA shall be placed into escrow on any subsequent Third Party Sale of the Property that was subject to such transfer or conveyance.
- iii. The "**Current Outstanding Balance**" shall mean an amount equal to the then-current IH Repayment Amount, WV First Repayment Amount,

and Alternative Line Repayment Amount due by the Developer to the City (based on the portion of the Maximum Reimbursement Amount delivered by the City to the Trustee or the WV Developer as of the then-current date) less the portion of the IH Repayment Amount, WV First Repayment Amount, and Alternative Line Repayment Amount repaid to the City by the Developer as of such date. The **"IH Current Outstanding Balance"** shall mean an amount equal to the then-current IH Repayment Amount due by the IH Developer to the City (based on the portion of the Maximum Reimbursement Amount related to the IH Developer's share of Line 1 delivered by the City to the Trustee as of the then-current date) less the portion of the IH Repayment Amount repaid to the City by the IH Developer as of such date. The **"WV Current Outstanding Balance"** shall mean an amount equal to the then-current WV First Repayment Amount and Alternative Line Repayment Amount due by the WV Developer to the City (based on the portion of the Maximum Reimbursement Amount related to the WV Supplemental Costs, CCN Release Fee, the WV Developer's share of Line 1, Line 2, and Alternative Line delivered by the City to the Trustee or the WV Developer as of the then-current date) less the portion of the WV First Repayment Amount and Alternative Line Repayment Amount previously repaid to the City by the WV Developer as of such date.

- iv. The **"Maximum Outstanding Balance"** shall mean an amount equal to the difference between (1) the IH Repayment Amount, WV First Repayment Amount, and the Alternative Line Repayment Amount, and (2) the portion of the IH Repayment Amount, WV Repayment Amount, and Alternative Line Repayment Amount that has been repaid to the City by the Developer as of the then-current date. The **"IH Maximum Outstanding Balance"** shall mean an amount equal to the difference between the IH Repayment Amount and the portion of the IH Repayment Amount that has been repaid to the City by the IH Developer as of the then-current date. The **"WV Maximum Outstanding Balance"** shall mean an amount equal to the difference between the WV First Repayment Amount and Alternative Line Repayment Amount, and the portion of the WV First Repayment Amount and Alternative Line Repayment Amount that has been repaid to the City by the WV Developer as of the then-current date.
 - v. **"Property Owner Delinquency"** shall mean the occurrence of the following events: (1) an owner of any portion of the Property fails to timely pay an assessment payment; and (2) the funds then held in the Cashflow Delinquency Reserve Account (defined in the Indenture) are insufficient to cure the assessment delinquency, so there is a potential need to draw on the Bond Reserve Fund (defined in the Indenture). The term **"Indenture"** shall mean any trust indenture by and between the City and the Trustee (as defined in the PID Finance Agreement) relating to the Senior Master PID Bonds, as it may be amended from time to time.
- (c) Upon a Third Party Sale of any portion of the IH Property, the IH Developer shall place the SSA related to the IH Project into escrow accounts with Heritage Title Company of Austin, Inc. ("Escrow Agent"). All or a portion

of the SSA placed into escrow by the IH Developer shall be used to fund the IH Repayment Amount, or otherwise be disbursed as set forth in Exhibit E, attached hereto. Timing and the amount of payments to the City will be such that repayment to the City of the IH Repayment Amount is the same as or shorter than the guaranty schedule provided in Section 4.03 below. The SSA shall be delivered to the Escrow Agent and disbursed as set forth herein and in the Escrow Agreement (a copy of which is attached hereto as Exhibit F).

- (d) Upon a Third Party Sale of any portion of the WV Property, the WV Developer shall place the SSA related to the WV Project into escrow accounts with the Escrow Agent. All or a portion of the SSA placed into escrow by the WV Developer shall be used to fund the WV First Repayment Amount and Alternative Line Repayment Amount, or otherwise be disbursed as set forth in Exhibit E, attached hereto. Timing and the amount of payments to the City will be such that repayment to the City of the WV First Repayment Amount and Alternative Line Repayment Amount is the same as or shorter than the guaranty schedule provided in Section 4.03 below. The SSA shall be delivered to the Escrow Agent and disbursed as set forth herein and in the Escrow Agreement (a copy of which is attached hereto as Exhibit E).
- (e) The City Share shall be disbursed to the City to pay the IH Repayment Amount, WV First Repayment Amount, and Alternative Line Repayment Amount. If the IH City Share is greater than the IH Current Outstanding Balance, then the IH City Share shall be held in escrow and shall be disbursed to the City as set forth in Exhibit F. If the WV City Share is greater than the WV Current Outstanding Balance, then the WV City Share shall be held in escrow and shall be disbursed to the City as set forth in Exhibit F.

The IH Bond Share shall be held in escrow and shall be disbursed to the City (or become part of the City Share) on (i) the date the Senior Master PID Bonds related to the IH Project are no longer outstanding, or (ii) on the date of the Repayment Deadline (as defined herein) provided there is no Property Owner Delinquency or a Holding Period (as defined in the Escrow Agreement) then in effect and the Developer has not paid the City in full by the Repayment Deadline, or (iii) after the first Repayment Deadline (i.e., October 31, 2020) when the IH City Share and the IH Bond Share in total are sufficient to fully repay the IH Maximum Outstanding Balance to the City, provided there is no Property Owner Delinquency or a Holding Period then in effect. In all other circumstances or if a Property Owner Delinquency has occurred or a Holding Period is then in effect, the IH Bond Share shall be disbursed as set forth in the Escrow Agreement attached hereto as Exhibit F.

The WV Bond Share shall be held in escrow and shall be disbursed to the City (or become part of the City Share) on (i) the date the Senior Master PID Bonds related to the WV Project are no longer outstanding, or (ii) on the date of the Repayment Deadline (as defined herein) provided there is no Property Owner Delinquency or a Holding Period then in effect and the Developer has not paid the City in full by the Repayment Deadline, or (iii) after the first Repayment Deadline (i.e., October 31, 2020) when the WV City Share and WV Bond Share in total are sufficient to fully repay the WV Maximum

Outstanding Balance (excluding the Alternative Line portion of the WV Maximum Outstanding Balance) to the City, provided there is no Property Owner Delinquency or a Holding Period then in effect, or (iv) after the first Repayment Deadline (i.e., October 31, 2020) when the WV City Share and WV Bond Share in total are sufficient to fully repay the portion of the WV Maximum Outstanding Balance related to the Alternative Line to the City, provided there is no Property Owner Delinquency or a Holding Period then in effect. In all other circumstances or if a Property Owner Delinquency has occurred or a Holding Period is then in effect, the WV Bond Share shall be disbursed as set forth in the Escrow Agreement attached hereto as Exhibit F."

- G. Section 4.03 of the Agreement shall be deleted in its entirety and replaced with the following, to redefine the schedule for the guaranty of repayment to the City:

"4.03 Guaranty of Repayment. The WV Developer or its Designated Successor or Assign shall guarantee the repayment to the City of the WV First Repayment Amount and the Alternative Line Repayment Amount.

The IH Developer or its Designated Successor or Assign shall guarantee the repayment to the City of the IH Repayment Amount.

For each reimbursement amount paid by the City to the Trustee for WW Supplemental Costs, CCN Release Fee, Line 1, Line 2, and the Alternative Line, the applicable Developer will ensure the repayment to the City of the IH Repayment Amount, WV First Repayment Amount, and Alternative Line Repayment Amount (up to the Reimbursement Amount paid by City) as follows ("**Repayment Deadline**"):

October 31, 2020	WW Supplemental Costs and CCN Release Fee	WV Developer
October 31, 2025	IH Developer's share of Line 1 WV Developer's share of Line 1	IH Developer WV Developer
October 31, 2030	Line 2	WV Developer
5 years after City's acceptance of entire Alternative Line (Line 5 or both Line 6A and 6B)	Alternative Line	WV Developer

If a Developer does not timely repay the City in accordance with the schedule set forth above, then the City may at its sole discretion, until such default is cured:

- i. (x) refuse to issue any more PID Bonds for the applicable Developer's Property, and/or (y) cause the Trustee to hold the proceeds of any bonds for that Developer until such time as the applicable Developer pays such past due amounts to the City; provided, however, if the City elects, at its option, to issue more PID

Bonds, the City agrees to release the portion of the proceeds of such PID Bonds necessary to pay off the Senior Master PID Bonds encumbering the portion of the Developer's Property for which the PID Bonds are issued; and

- ii. charge interest at a rate of 4% per annum on such past due amount, beginning on the date such amount was due and ending on the date the past-due amount is paid. Such remedy is in addition to any other remedies allowed in this Agreement.

The City shall be held harmless by the Developer, and its Designated Successor or Assign, from any penalties or fees associated with the City's actions stated in this Section.

If the Developer submits a Request (defined below) for the issuance of PID Bonds for an applicable line or component of the Water Project, CCN Release Fee, or the WW Supplemental Costs, and the City does not subsequently issue the PID Bonds, then the requesting Developer's Repayment Deadline for that portion of the Water Project, CCN Release Fee, or WW Supplemental Costs shall be extended for the same period of time until the date that City approves such Request. However, the Developer shall not be released of the obligation to guarantee to repay the City for the other portions of the IH Repayment Amount, WV First Repayment Amount, and Alternative Line Repayment Amount. For purposes herein, a "Request" shall mean a written request made by the Developer to the City Manager and City's Chief Financial Officer, accompanied by reasonable documentation required by the City. The City will use reasonable and good faith efforts to sell bonds after receiving a valid Request from the Developer, provided that the Developer can reasonably demonstrate to the City and its financial advisors via a Feasibility and Market Study Analysis (or such other similar documentation) that there is sufficient security for the PID Bonds, based upon the bond market existing at the time of such proposed sale. PID Bonds are not required to be issued under this Section unless

- i. the statutory requirements set forth in Chapter 372 of the Texas Local Government Code have been satisfied;
- ii. the City receives at the time of issuance an opinion of counsel selected by the City stating in effect that the PID Bonds are legal and valid under Texas law and that all preconditions to their issuance under State and Federal law have been satisfied; and
- iii. the Attorney General of the State of Texas has approved the issuance of the PID Bonds as required by the PID Act.

Any Request not meeting the above requirements shall not be considered valid and will not affect the Developer's Repayment Deadline, or IH Repayment Amount, WV First Repayment Amount, and Alternative Line Repayment Amount."

- H. Section 4.04 of the Agreement is renumbered Section 4.04(a) and a new 4.04(b) is added as follows, to further define the City's obligations if the Developer defaults on the project:

- “(a) Within 30 days of final acceptance of the applicable line of the Water Project or component of the WW Project by the City, the Developer will submit a written report to the Director of the total costs incurred by the Developer for such applicable line of the Water Project or the WW Supplemental Costs that includes supporting information documenting all amounts paid for which reimbursement is claimed and verifying that the Developer has complied with all other requirements of this Agreement in the construction of the applicable line of the Water Project or the WW Supplemental Costs related to the WW Project. The City will use the report to determine and verify the amount of actual costs eligible to be reimbursed to the Trustee under this Agreement. If the Director determines the Developer’s report to be incomplete or otherwise insufficient to determine the actual costs eligible for reimbursement, the Director will notify the Developer of the particulars in which its documentation is deficient within 30 days of the date the Developer submits its report of project costs and the Developer will timely provide all additional information reasonably required by the Director to determine the actual costs eligible for reimbursement. If the Director does not notify the Developer in writing of any deficiencies within such 30-day period, the Developer’s report shall be deemed approved by the Director.
- (b) Notwithstanding anything to the contrary, the Parties hereby acknowledge that if the City elects to assume the construction management role and elects to direct the close out of the unpaid expenses for the uncompleted components of the Water Project secured by the applicable PID Bonds as provided in Section 2.15 above, then the City will pay the Reimbursement Amount to the Trustee as contemplated in Section 2.15 above, despite the fact that the given component of the Water Project has not been completed and finally accepted by the City. The Reimbursement Amount so paid will be calculated on the total PID-eligible costs incurred by the Developer to date for the applicable component of the Water Project as determined by the Director based on contracts, invoices, bills paid affidavit, City reimbursement eligible costs, and related materials submitted to the City by the Developer (and accepted by the City) throughout the construction process. It is hereby further acknowledged that any additional funds expended by the City in order to close out uncompleted components of the Water Project that were eligible to be reimbursed by the City shall be deemed paid for purposes of this Agreement and shall reduce the Maximum Reimbursement Amount on a dollar per dollar basis.”
- I. The following is hereby added as a new Section 4.06 to the Agreement, to replace one of the mechanisms to assist in the repayment of the City:

“4.06 Restriction on Property.

- (a) Transfer Restriction Document. Promptly after final approval of this Agreement by the City Council and prior to any sale or transfer of property, the WV Developer and the IH Developer (or their Designated Successors or Assigns) will each record, in the Official Public Records of Travis County, Texas, a document in the form attached hereto as Exhibit E (the “**Transfer Restriction Document**”) on their respective properties. The Transfer Restriction Document shall serve to provide notice to the future landowners and the Escrow Agent that upon a Third Party Sale of all or any portion of the Property, the WV Developer is required to place in escrow the WV City Share and WV Bond Share and the IH Developer is required to place in

escrow the IH City Share and IH Bond Share from any such Third Party Sale or such sale transaction or transfer of land cannot be completed.

- (b) Release of Transfer Restriction Document. Upon the request of the applicable Developer, the City shall record a release or partial release, as applicable, of the Transfer Restriction Document upon the occurrence of any of the following:

- i. upon completion of a Third Party Sale, the City shall release the portion of the Property which was the subject of such sale;
- ii. after the Senior Master PID Bonds related to the IH Project are no longer outstanding, upon IH Developer (or its Designated Successor or Assign) and the City agreeing that there are sufficient funds held in escrow to equal the IH Maximum Outstanding Balance, the IH Developer may release all remaining IH Property (as further described in Exhibit F);
- iii. after the Senior Master PID Bonds related to the WV Project are no longer outstanding, upon WV Developer (or its Designated Successor or Assign) and the City agreeing that there are sufficient funds held in escrow to equal the WV Maximum Outstanding Balance, the WV Developer may release all remaining WV Property (as further described in Exhibit F);
- iv. upon IH Developer (or its Designated Successor or Assign) fully repaying the City the IH Repayment Amount, and the City concurring that the City has been fully repaid, the IH Developer may release all remaining IH Property (as further described in Exhibit F); and
- v. upon WV Developer (or its Designated Successor or Assign) fully repaying the City the WV Repayment Amount and the Alternative Line Repayment Amount, and the City concurring that the City has been fully repaid, the WV Developer may release all remaining WV Property (as further described in Exhibit F).

- (c) Escrow Agent; Escrow of SSA. Heritage Title Company of Austin, Inc. (the Escrow Agent) shall be the title company for any Third Party Sale and for holding and disbursing the SSA. The instructions to the Escrow Agent are attached as Exhibit F. Escrow Agent shall promptly disburse the SSA as described in Exhibit F; provided however, that the amount released to the City for the IH Repayment Amount shall not exceed the IH Current Outstanding Balance and the amount released to the City for the WV First Repayment Amount and Alternative Line Repayment Amount shall not exceed the WV Current Outstanding Balance.

Any fees charged by the Escrow Agent shall be paid by the Developer or its Designated Successor or Assign, or out of the WV Developer's gross proceeds from a Third Party Sale (excluding the SSA).

The amount of IH City Share that exceeds the IH Current Outstanding Balance shall be held in an interest bearing escrow account by the Escrow Agent until such time as additional reimbursement funds related to the IH Project are delivered by the City to the Trustee, at which time the funds held in escrow shall be released as set forth in Exhibit F (but in no event shall any amounts be released to the City in excess of the IH Current Outstanding Balance). The amount of WV City Share that exceeds the WV Current Outstanding Balance shall be held in an interest bearing escrow account by the Escrow Agent until such time as additional reimbursement funds related to the WV Project are delivered by the City to the Trustee, at which time the funds held in escrow shall be released as set forth in Exhibit F (but in no event shall any amounts be released to the City in excess of the WV Current Outstanding Balance). For example, if the WV Developer has delivered \$10 million dollars toward the WV City Share to the Escrow Agent and the City has only delivered to the Trustee \$2 million dollars of reimbursement funds related to the WV Project, then the Escrow Agent would only release \$2 million dollars to the City and \$8 million dollars would remain in that escrow. If later the City delivers to the Trustee \$5 million dollars of reimbursement funds related to the WV Project, then the Escrow Agent would release \$5 million dollars to the City and retain the remaining \$3 million dollars in that escrow account until the City delivers additional monies to the Trustee.

During any such time as the Escrow Agent is holding funds related to the IH Project in an amount equal to the IH Maximum Outstanding Balance, then the IH Developer (or its Designated Successor or Assign) shall have no obligation to escrow any further portion of any net sales proceeds from a Third Party Sale that would result in the escrowed funds related to the IH Project exceeding the IH Maximum Outstanding Balance. If at any time such escrowed funds are less than the IH Maximum Outstanding Balance (due to disbursement of the IH Bond Share as provided for in the Escrow Agreement to cure a Property Owner Delinquency), then the IH Developer (or its Designated Successor or Assign) shall resume escrowing the IH City Share and IH Bond Share until the funds held in escrow equal the IH Maximum Outstanding Balance.

During any such time as the Escrow Agent is holding funds related to the WV Project in an amount equal to the WV Maximum Outstanding Balance, then the WV Developer (or its Designated Successor or Assign) shall have no obligation to escrow any further portion of any net sales proceeds from a Third Party Sale that would result in the escrowed funds related to the WV Project exceeding the WV Maximum Outstanding Balance. If at any time such escrowed funds are less than the WV Maximum Outstanding Balance (due to disbursement of the WV Bond Share as provided for in the Escrow Agreement to cure a Property Owner Delinquency), then the WV Developer (or its Designated Successor or Assign) shall resume escrowing the WV City Share and WV Bond Share until the funds held in escrow equal the WV Maximum Outstanding Balance.

Notwithstanding anything to the contrary, the Bond Share shall only be released to the Trustee to offset a Property Owner Delinquency if the Cash Delinquency Reserve Account is insufficient to cure such Property Owner

Delinquency. Under no circumstances shall the City Share be used for any other purpose than to repay the City pursuant to this Agreement.

The Escrow Agent will provide annual reports to the Director that identify, for each Developer, the total costs reimbursed by the City to the Trustee and the amount repaid to date to the City by the Developer. Such annual reports shall be submitted by September 30th of each year to the Director."

- J. The first paragraph of Section 7.02 is hereby deleted from Section 7.02 and replaced with the following, to eliminate one remedy for a default by the Developer:

"If one Party believes that the other Party is in Default (herein so called) of any other provision of this Agreement, the nondefaulting Party will give written notice to the other Party ("**Default Notice**"), specifying the event of Default and extending the defaulting Party 30 days to cure the Default (unless a longer period is provided elsewhere in this Agreement) or, if the curative action cannot reasonably be completed within 30 days, 30 days to commence the curative action and thereafter to diligently pursue the curative action to completion. This 30-day period for notice and opportunity to cure must pass before the nondefaulting Party may initiate any remedies available to the nondefaulting Party due to an alleged Default. The nondefaulting Party must mitigate any direct or consequential damages arising from any Default to the extent reasonably possible under the circumstances. The Parties agree that they will use good faith, reasonable efforts to resolve any dispute by agreement, including engaging in nonbinding arbitration, mediation or other alternative dispute resolution methods as recommended by the laws of the State of Texas, before initiating any lawsuit to enforce their respective rights under this Agreement. If the Default is not cured within the 30-day period, or if curative action is not commenced or diligently pursued in the case of curative action that cannot reasonably be completed in 30 days, the nondefaulting Party may pursue all remedies, at law or in equity, that it deems appropriate to redress such Default."

- K. The following is hereby added as a new paragraph to the end of Section 7.02, to add a remedy for a default by the Developer:

"In addition to the other remedies of the City, the Developer's obligation to repay the City on the schedule set forth in Section 4.03 above shall be secured by a lien on the applicable Developer's Property that has not been sold to a third-party for the unpaid amount due on a pro-rata basis per acre; provided, however, such lien shall attach only upon recordation of a notice thereof in the real property records of Travis County, Texas, which notice shall include the following information: the name of the lien claimant (the City); a description of the Developer's Property; a description of the amount of the lien claim at that time (i.e., applicable Current Outstanding Balance then due and payable); and a statement that the lien is claimed pursuant to the provisions of this Agreement ("**Lien Claim**"). The City acknowledges that any such Lien Claim shall be subordinate to the Senior Master PID Bonds. Notwithstanding the foregoing or anything to the contrary contained herein, if the Developer does not cure such default after the applicable notice and cure period set forth above, then the City shall give the Developer and holder of the Senior Master PID Bonds not less than fourteen (14) days written notice prior to filing any Lien Claim. The holder of the Senior Master PID Bonds may, but shall have no obligation to, cure such delinquency on or before the expiration of such 14-day period. Upon payment of the applicable Current Outstanding Balance or any portion thereof, the Lien Claim shall be released as to the applicable portion of the Property for which the Current

Outstanding Balance was paid. For example, if the WV Current Outstanding Balance equals \$3,000,000, and there are 1,000 acres owned by the WV Developer at the time of such Lien Claim, then the lien amount would be applied to each acre in the amount of \$3,000 per acre. If the WV Developer sells 150 acres and pays a total of \$450,000 to the City (\$3,000 per acre multiplied by 150 acres), then the City will release such Lien Claim from the 150 acre parcel and the Lien Claim of \$2,550,000 would remain on the remainder of the Property then owned by the WV Developer. At such time as the WV Current Outstanding Balance is paid in full, then the Lien Claim is released on the remainder of the WV Property."

- L. Section 7.16 (c) of the Agreement shall be deleted in its entirety and replaced with the following, to modify the assignment provisions of the Agreement:

"(c) The provisions of this Agreement concerning the water service commitment to be provided to the Property shall run with the land; provided however, the remaining provisions of this Agreement shall be the individual requirement of or benefit to (as the case may be) of the Developer and its Designated Successors and Assigns. For purposes herein "**Designated Successors and Assigns**" and "**Designated Successor or Assign**" shall mean an entity to which the Developer expressly assigns (in writing) all of its remaining rights and obligations contained in this Agreement pursuant to this Section 7.16. Upon any assignment to its Designated Successors and Assigns, the Developer may request the City to approve the release of the Developer from all of the rights and obligations set forth in this Agreement, such approval not to be unreasonably withheld, conditioned or delayed. Upon such approval by the City, the Developer shall no longer be liable for the remaining rights and obligations herein and the City shall look solely to the Designated Successors and Assigns for performance. Any sale of a portion of the Property and assignment of any right hereunder shall not be deemed a sale and assignment to a Designated Successor or Assign unless:

- (i) the conveyance or transfer instrument effecting such sale and assignment is not a Third Party Sale and expressly states that the City has approved the Designated Successor or Assign in accordance with the parameters set forth in Section 7.16(b) for such sale and assignment;
- (ii) the conveyance or transfer is for all WV Property then owned by WV Developer, if related to the WV Property; or all IH Property then owned by the IH Developer, if related to the IH Property; and
- (iii) the Designated Successor or Assign assumes, in writing and without modification or hypothecation to the Agreement, all remaining rights and obligations of the Developer including, but not limited to, the repayment to the City of the applicable IH Repayment Amount, WV First Repayment Amount, and Alternative Line Repayment Amount within the Repayment Deadline."

III. MISCELLEANOUS

- A. **Agreement Provisions.** All other provisions of the Agreement are in full force and effect. In the event of conflict between this Amendment and any provision of the Agreement, this Amendment shall control.
- B. **Effective Date.** This Amendment will be effective upon execution by all parties.
- C. **Context and Defined Terms.** It is hereby acknowledged that the Agreement addresses funds that will be paid for both the WV Project and the IH Project. Each Project, however, will have its own PID Finance Agreement, its own set of Senior Master PID Bonds, its own set of Subordinate Master PID Bonds and its own set of Phased PID Bonds, etc. Therefore, anywhere in this Amendment where "PID Finance Agreements", "Subordinate Master PID Bonds", "Senior Master PID Bonds", "Master PID Bonds", "Phased PID Bonds", "Project Funds" or "Trustee" are referred to, it means the agreement, bonds, funds, trustee, etc., related to the IH Project or WV Project, as applicable. Any capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Agreement.
- D. **Section 7.19.** Section 7.19 of the Agreement is hereby deleted in its entirety.
- E. **Section 8.03.** Section 8.03 of the Agreement is hereby deleted in its entirety.
- F. **Exhibit D.** Exhibit D of the Agreement is hereby deleted in its entirety.
- G. **Exhibit E.** Exhibit E attached hereto is hereby made a part of the Agreement.
- H. **Exhibit F.** Exhibit F attached hereto is hereby made a part of the Agreement.

[Signature Pages to Follow]

CITY OF AUSTIN:

By: _____
Rudy Garza
Assistant City Manager

Date: _____

[Signatures Continue on Next Page]

CLUB DEAL 116 INDIAN HILLS TX, LIMITED
PARTNERSHIP, a Delaware limited partnership qualified
to do business in Texas

By: CD116 Indian Hills Tx, LLC, a Delaware limited
liability company

Its: General Partner

By: _____
Douglas H. Gilliland, Manager

CLUB DEAL 120 WHISPER VALLEY, LIMITED
PARTNERSHIP, a Delaware limited partnership qualified
to do business in Texas

By: CD120 GP, LLC, a Delaware limited liability
company

Its: General Partner

By: _____
Douglas H. Gilliland, Manager

EXHIBIT E

Form of Transfer Restriction Document

[See attached]

Heritage Title Company of Austin
401 Congress Avenue, Suite 1500
Austin, TX 78701
Attn: Nancy Grasshoff

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

THIS NOTICE REGARDING TRANSFER RESTRICTIONS AND REQUIREMENTS (the “**Notice Requirement**”) is entered into as of the ____ day of _____, 20__ (the “**Effective Date**”) by CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP, a Delaware limited partnership (the “**WV Developer**”), for the consideration and purposes set forth herein.

WHEREAS, as of the Effective Date hereof, the WV Developer owns all of the real property described and/or depicted in Exhibit "1" attached hereto (the "**WV Property**");

WHEREAS, on or before the Effective Date, the WV Developer entered into that certain Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions, including that certain First Amendment to the Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions (as amended from time to time, the “Restated Cost Reimbursement Agreement”), by and among the City of Austin (“City”), the WV Developer, and Club Deal 116 Indian Hills Tx, Limited Partnership;

WHEREAS, pursuant to the Restated Cost Reimbursement Agreement, the WV Developer agreed to place certain restrictions on the WV Property to ensure that, upon certain sales of all or any portion of the WV Property, a certain percentage of the net proceeds of such sale would be placed into escrow and disbursed as set forth in the Restated Cost Reimbursement Agreement and the Escrow Agreement attached thereto; and

WHEREAS, the WV Developer desires to set forth certain notice requirements regarding the transfer of all or any portion of the WV Property to ensure compliance with the terms of the Restated Cost Reimbursement Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the WV Developer hereby agrees as follows:

1. Transfer of WV Property. In accordance with the terms of the Restated Cost Reimbursement Agreement, upon a Third Party Sale (as defined in the Restated Cost Reimbursement Agreement) of all or any portion of the WV Property, the WV Developer shall place a certain percentage of the net proceeds (the "Escrowed Funds") of such Third Party Sale into escrow with Heritage Title Company of Austin, Inc. (the "Escrow Agent"), and such sum shall be held or disbursed by Escrow Agent as set forth in such Restated Cost Reimbursement Agreement and the Escrow Agreement attached thereto. Heritage Title Company of Austin, Inc. (the Escrow Agent) shall be the title company for any Third Party Sale and for holding and disbursing the Escrowed Funds.

2. Release of WV Property from Notice Requirement. The WV Developer (or its Designated Successor or Assign), upon approval by the City (as provided in the Restated Cost Reimbursement Agreement and Escrow Agreement attached thereto), shall have the right to release portions of the WV Property from this Notice Requirement and from the foregoing obligation to place the Escrowed Funds into escrow, in accordance with the terms set forth in the Restated Cost Reimbursement Agreement, by recording a written document describing the portion of the WV Property to be released herefrom.

3. Miscellaneous.

(a) Notice Requirement Runs With the Land; Binding Effect. This Notice Requirement shall run with the WV Property to the extent not released as set forth herein, and shall be binding on WV Developer and its Designated Successor or Assign (as defined in the Restated Cost Reimbursement Agreement), and their respective successors and assigns.

(b) Amendment or Termination. The terms and conditions herein may not be amended or terminated except by a written instrument duly executed and acknowledged by the WV Developer and the City and recorded in the Official Public Records of Travis County, Texas.

(c) Mortgages Subordinate to Notice Requirement. Any mortgage or deed of trust lien entered into on or after the date of this Notice Requirement which affects any portion of the WV Property shall at all times be subject and subordinate to the terms of this Notice Requirement and any person acquiring title by reason of foreclosure under any such mortgage or a deed in lieu of foreclosure shall acquire title to the premises affected thereby subject to all of the terms of this Notice Requirement.

(d) Notices.

(i) All notices given pursuant to this Notice Requirement shall be in writing and shall be given by personal service or United States mail (or United States express mail or other established express delivery service such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address set forth below. If a notice must be given to a person other than one designated below, such notice shall be sent to the person and address shown on the then current real property tax rolls of the applicable county in which the applicable portion of the WV Property is located. All notices to the WV Developer or Escrow Agent shall be sent to the appropriate party at the address set forth below:

WV Developer: Club Deal 120 Whisper Valley, Limited Partnership
c/o Douglas H. Gilliland
9285 Huntington Square
North Richland Hills, Texas 76182
Fax: 817-788-1670

With a copy to: Metcalfe Williams, LLP
301 Congress Avenue, Suite 1075
Austin, Texas 78701
Attn: Steven C. Metcalfe
Fax: 512-551-4943

Escrow Agent: Heritage Title Company of Austin, Inc.
401 Congress Avenue, Suite 1500
Austin, TX 78701
Attn: Nancy Grasshoff
Fax: 512-505-5024

City: City of Austin
PO Box 1088
Austin, Texas 78767
Attn: Director, Austin Water
Fax: (512) 370-3838

With a copy to: City of Austin
PO Box 1088
Austin, Texas 78767
Attn: Law Department
Fax: (512) 974-6490

(ii) All notices given pursuant to this Notice Requirement shall be deemed given upon receipt. For the purpose of this Notice Requirement, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified in subparagraph (d)(i) above (as shown

on the return receipt), (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph (d)(i) above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

(e) Attorney's Fees. In the event the WV Developer initiates or defends any legal action or proceeding in any way connected with this Notice Requirement, the WV Developer (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the adverse party or parties (other than the City) in any such action or proceeding the WV Developer's reasonable costs and attorneys' fees (including, without limitation, its reasonable costs and attorneys' fees on any appeal).

(f) Severability. If any portion of this Notice Requirement or the application of them to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Notice Requirement or the application of such portion to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each portion of this Notice Requirement shall be valid and shall be enforced to the extent permitted by law.

(g) Construction. In construing the provisions of this Notice Requirement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular. The captions and headings in this Notice Requirement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, conditions or agreements contained herein. Any capitalized term not defined herein shall have the meaning set forth in the Restated Cost Reimbursement Agreement.

(h) Recordation. This Notice Requirement shall be recorded in the Official Public Records of Travis County, Texas.

(i) Interpretation. The provisions of this instrument shall be governed by, and construed in accordance with, the laws of the State of Texas. Notwithstanding any custom, rule of interpretation or construction, or otherwise, neither this Notice Requirement, nor any portion hereof, shall be construed more strongly against the party who prepared it.

[Signature Page to Follow]

EXECUTED as of the date first set forth above.

THE WV DEVELOPER:

**CLUB DEAL 120 WHISPER VALLEY,
LIMITED PARTNERSHIP,
a Delaware limited partnership**

**By: CD120 GP, LLC, a Delaware limited
liability company, its general partner**

**By: _____
Douglas H. Gilliland, Manager**

STATE OF TEXAS

COUNTY OF _____

On this _____ day of _____, 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared Douglas H. Gilliland, the Manager of CD120 GP, LLC, a Delaware limited liability company, the general partner of Club Deal 120 Whisper Valley, Limited Partnership, a Delaware limited partnership, who executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said company and partnership, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:

Notary Public in and for the State of Texas

Approval as to form:

Sharon Smith, Assistant City Attorney

Date: _____

EXHIBIT 1 TO NOTICE
REGARDING TRANSFER RESTRICTIONS AND REQUIREMENTS

WV PROPERTY

Exhibit 1 to Notice Regarding Transfer Restrictions and Requirements

Heritage Title Company of Austin
401 Congress Avenue, Suite 1500
Austin, TX 78701
Attn: Nancy Grasshoff

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

THIS NOTICE REGARDING TRANSFER RESTRICTIONS AND REQUIREMENTS (the “**Notice Requirement**”) is entered into as of the ____ day of _____, 20__ (the “**Effective Date**”) by CLUB DEAL 116 INDIAN HILLS TX, LIMITED PARTNERSHIP, a Delaware limited partnership (the “**IH Developer**”), for the consideration and purposes set forth herein.

WHEREAS, as of the Effective Date hereof, the IH Developer owns all of the real property described and/or depicted in Exhibit "1" attached hereto (the "**IH Property**");

WHEREAS, on or before the Effective Date, the IH Developer entered into that certain Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions, including that certain First Amendment to the Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions (as amended from time to time, the “**Restated Cost Reimbursement Agreement**”), by and among the City of Austin (“**City**”), the IH Developer, and Club Deal 120 Whisper Valley, Limited Partnership;

WHEREAS, pursuant to the Restated Cost Reimbursement Agreement, the IH Developer agreed to place certain restrictions on the IH Property to ensure that, upon certain sales of all or any portion of the IH Property, a certain percentage of the net proceeds of such sale would be placed into escrow and disbursed as set forth in the Restated Cost Reimbursement Agreement and the Escrow Agreement attached thereto; and

WHEREAS, the IH Developer desires to set forth certain notice requirements regarding the transfer of all or any portion of the IH Property to ensure compliance with the terms of the Restated Cost Reimbursement Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the IH Developer hereby agrees as follows:

1. Transfer of IH Property. In accordance with the terms of the Restated Cost Reimbursement Agreement, upon a Third Party Sale (as defined in the Restated Cost Reimbursement Agreement) of all or any portion of the IH Property, the IH Developer shall place a certain percentage of the net proceeds (the "Escrowed Funds") of such Third Party Sale into escrow with Heritage Title Company of Austin, Inc. (the "Escrow Agent"), and such sum shall be held or disbursed by Escrow Agent as set forth in such Restated Cost Reimbursement Agreement and the Escrow Agreement attached thereto. Heritage Title Company of Austin, Inc. (the Escrow Agent) shall be the title company for any Third Party Sale and for holding and disbursing the Escrowed Funds.

2. Release of IH Property from Notice Requirement. The IH Developer (or its Designated Successor or Assign), upon approval by the City (as provided in the Restated Cost Reimbursement Agreement and Escrow Agreement attached thereto), shall have the right to release portions of the IH Property from this Notice Requirement and from the foregoing obligation to place the Escrowed Funds into escrow, in accordance with the terms set forth in the Restated Cost Reimbursement Agreement, by recording a written document describing the portion of the IH Property to be released herefrom.

3. Miscellaneous.

(a) Notice Requirement Runs With the Land; Binding Effect. This Notice Requirement shall run with the IH Property to the extent not released as set forth herein, and shall be binding on IH Developer and its Designated Successor or Assign (as defined in the Restated Cost Reimbursement Agreement), and their respective successors and assigns.

(b) Amendment or Termination. The terms and conditions herein may not be amended or terminated except by a written instrument duly executed and acknowledged by the IH Developer and the City and recorded in the Official Public Records of Travis County, Texas.

(c) Mortgages Subordinate to Notice Requirement. Any mortgage or deed of trust lien entered into on or after the date of this Notice Requirement which affects any portion of the IH Property shall at all times be subject and subordinate to the terms of this Notice Requirement and any person acquiring title by reason of foreclosure under any such mortgage or a deed in lieu of foreclosure shall acquire title to the premises affected thereby subject to all of the terms of this Notice Requirement.

(d) Notices.

(i) All notices given pursuant to this Notice Requirement shall be in writing and shall be given by personal service or United States mail (or United States express mail or other established express delivery service such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address set forth below. If a notice must be given to a person other than one designated below, such notice shall be sent to the person and address shown on the then current real property tax rolls of the applicable county in which the applicable portion of the IH Property is located. All notices to the IH Developer or Escrow Agent shall be sent to the appropriate party at the address set forth below:

IH Developer: Club Deal 116 Indian Hills Tx, Limited Partnership
c/o Douglas H. Gilliland
9285 Huntington Square
North Richland Hills, Texas 76182
Fax: 817-788-1670

With a copy to: Metcalfe Williams, LLP
301 Congress Avenue, Suite 1075
Austin, Texas 78701
Attn: Steven C. Metcalfe
Fax: 512-551-4943

Escrow Agent: Heritage Title Company of Austin, Inc.
401 Congress Avenue, Suite 1500
Austin, TX 78701
Attn: Nancy Grasshoff
Fax: 512-505-5024

City: City of Austin
PO Box 1088
Austin, Texas 78767
Attn: Director, Austin Water
Fax: (512) 370-3838

With a copy to: City of Austin
PO Box 1088
Austin, Texas 78767
Attn: Law Department
Fax: (512) 974-6490

(ii) All notices given pursuant to this Notice Requirement shall be deemed given upon receipt. For the purpose of this Notice Requirement, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified in subparagraph (d)(i) above (as shown

on the return receipt), (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph (d)(i) above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

(e) Attorney's Fees. In the event the IH Developer initiates or defends any legal action or proceeding in any way connected with this Notice Requirement, the IH Developer (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the adverse party or parties (other than the City) in any such action or proceeding the IH Developer's reasonable costs and attorneys' fees (including, without limitation, its reasonable costs and attorneys' fees on any appeal).

(f) Severability. If any portion of this Notice Requirement or the application of them to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Notice Requirement or the application of such portion to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each portion of this Notice Requirement shall be valid and shall be enforced to the extent permitted by law.

(g) Construction. In construing the provisions of this Notice Requirement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular. The captions and headings in this Notice Requirement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, conditions or agreements contained herein. Any capitalized term not defined herein shall have the meaning set forth in the Restated Cost Reimbursement Agreement.

(h) Recordation. This Notice Requirement shall be recorded in the Official Public Records of Travis County, Texas.

(i) Interpretation. The provisions of this instrument shall be governed by, and construed in accordance with, the laws of the State of Texas. Notwithstanding any custom, rule of interpretation or construction, or otherwise, neither this Notice Requirement, nor any portion hereof, shall be construed more strongly against the party who prepared it.

[Signature Page to Follow]

EXECUTED as of the date first set forth above.

THE IH DEVELOPER:

**CLUB DEAL 116 INDIAN HILLS TX,
LIMITED PARTNERSHIP,
a Delaware limited partnership**

**By: CD116 Indian Hills Tx, LLC, a Delaware
limited liability company, its general
partner**

**By: _____
Douglas H. Gilliland, Manager**

STATE OF TEXAS

COUNTY OF _____

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for said State, personally appeared Douglas H. Gilliland, the Manager of CD116 Indian Hills Tx, LLC, a Delaware limited liability company, the general partner of Club Deal 116 Indian Hills Tx, Limited Partnership, a Delaware limited partnership, who executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said company and partnership, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:

Notary Public in and for the State of Texas

Approval as to form:

Sharon Smith, Assistant City Attorney

Date: _____

EXHIBIT 1 TO NOTICE
REGARDING TRANSFER RESTRICTIONS AND REQUIREMENTS

IH PROPERTY

EXHIBIT F

Form of Escrow Agreement

[See attached]

ESCROW AGREEMENT
(Indian Hills)

This Escrow Agreement (the "*Escrow Agreement*") is made and entered into as of this _____ day of _____, 2011 ("*Effective Date*"), by and between ORIX PUBLIC FINANCE LLC, a Delaware limited liability company ("*Senior Bond Holder*"), the CITY OF AUSTIN, a Texas municipal corporation ("*City*"), CLUB DEAL 116 INDIAN HILLS TX, LIMITED PARTNERSHIP ("*IH Developer*") and HERITAGE TITLE COMPANY OF AUSTIN, INC. ("*Escrow Agent*"). IH Developer, Senior Bond Holder and City are sometimes referred to herein singularly as a "*Party*" and collectively referred to herein as the "*Parties*".

RECITALS

WHEREAS, as of the Effective Date hereof, the IH Developer owns all of the real property described and/or depicted in Exhibit "A" attached hereto (the "*IH Property*" or "*Project*");

WHEREAS, on or before the Effective Date, the IH Developer entered into that certain Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions (as amended, the "*Restated Cost Reimbursement Agreement*"), by and among the City, the IH Developer, and Club Deal 120 Whisper Valley, Limited Partnership;

WHEREAS, pursuant to the Restated Cost Reimbursement Agreement, the IH Developer agreed to escrow net proceeds from certain sales of all or any portion of the IH Property with Escrow Agent;

WHEREAS, those certain City of Austin, Texas Special Assessment Revenue Bonds, Senior Series 2011 (Whisper Valley Public Improvement District) ("*Senior Bonds*") have been issued by the City to fund, among other things, the construction of certain infrastructure more particularly described in the Restated Cost Reimbursement Agreement;

WHEREAS, Senior Bond Holder is the current holder of the Senior Bonds and therefore, so long as the Senior Bonds are outstanding, Senior Bond Holder has an interest in seeing that the IH Repayment Amount is paid by IH Developer so that this obligation encumbering the IH Property will be released upon full payment thereof; and

WHEREAS, the Parties hereby agree that such funds shall be held in escrow and disbursed as set forth in this Escrow Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, IH Developer, City, Senior Bond Holder and Escrow Agent agree as follows:

1. **Deposit of IH Escrowed Funds.** Upon a Third Party Sale (defined below) of any portion of the IH Property, the IH Developer shall place the SSA (defined below) into escrow accounts with the Escrow Agent ("***IH Escrowed Funds***"). Except as set forth herein, all or a portion of the IH Escrowed Funds placed into escrow by the IH Developer shall be used to fund the IH Repayment Amount.

2. **IH Escrow Account.** Escrow Agent will open two (2) interest-bearing accounts into which the IH Escrowed Funds will be deposited, with the IH City Share being placed into one account (the "***IH City Escrow Account***") and the IH Bond Share being placed into the other account (the "***IH Bond Escrow Account***"). The IH City Escrow Account and IH Bond Escrow Account are collectively referred to herein as the "***IH Escrow Account***"). All interest or other income earned or accrued on the IH Escrowed Funds shall be held for the benefit of the City and distributed pursuant to this Escrow Agreement. Withdrawals from the IH Escrow Account shall be made only pursuant to the terms and provisions of this Escrow Agreement. Any fees charged by the Escrow Agent shall be paid by the IH Developer or out of the IH Developer's gross proceeds from a Third Party Sale (excluding the SSA).

3. **Definitions.**

(a) The "***SSA***" (sales set aside) shall be an amount equal to:

- i. the net proceeds received by the IH Developer on a Third Party Sale, multiplied by fifteen percent (15%) ("***IH Bond Share***") until the Senior Bonds for the IH Project are no longer outstanding; plus
- ii. the net proceeds received by the IH Developer on a Third Party Sale, multiplied by twenty percent (20%) ("***IH City Share***") until the IH Repayment Amount has been paid in full to the City or the IH Maximum Outstanding Balance is held in the IH City Escrow Account for the benefit of the City.

(b) The term "***Third Party Sale***" shall mean the initial sale, conveyance, or transfer of any portion of the IH Property by the IH Developer to any person or entity. A transfer or conveyance of all of the remaining portion of the Property to (A) an affiliate of the IH Developer which does not involve the use of any amount of cash ("***Affiliate***"), or (B) a joint venture arrangement of which the IH Developer (or an Affiliate of the IH Developer) is a part, and which does not involve the use of any amount of cash ("***Joint Venture***"), shall not be considered a Third Party Sale. A transfer or conveyance of the remaining portion of the IH Property to (C) a Designated Successor or Assign (as defined in the Restated Cost Reimbursement Agreement) shall not be considered a Third Party Sale. If the IH Developer has transferred or conveyed all of the remaining portion of the IH Property to an Affiliate or Joint Venture, then the term "IH Developer" in this Escrow Agreement shall be deemed to be the succeeding Affiliate or Joint Venture. If the condition of either (A), (B), or (C) applies to such transfer or conveyance, then the IH Developer shall not be required to place the SSA into the IH Escrow Account for that transaction, but (subject to the other terms and provisions hereof) the SSA shall be placed

into the IH Escrow Account on any subsequent Third Party Sale of the IH Property that was subject to such transfer or conveyance.

(c) The term "***IH Current Outstanding Balance***" shall mean an amount equal to the then-current IH Repayment Amount due by the IH Developer to the City (based on the portion of the Maximum Reimbursement Amount delivered as of the then-current date) less the portion of the IH Repayment Amount previously repaid to the City by the IH Developer as of such date.

(d) The term "***IH Maximum Outstanding Balance***" shall mean an amount equal to the difference between the IH Repayment Amount, and the portion of the IH Repayment Amount that has been repaid to the City by the IH Developer as of the then-current date.

(e) The term "***IH Repayment Amount***" shall mean the amount that the IH Developer shall repay the City, which is an amount equal to that portion of the Maximum Reimbursement Amount that is associated with the IH Developer's share (i.e. 25%) of the non-oversizing portion of Line 1. The term "***IH Repayment Amount***" shall mean the maximum amount that would be repaid to the City by the IH Developer assuming the IH Developer and the Trustee, in combination, have been paid the entire Maximum Reimbursement Amount associated with the IH Project.

(f) The term "***Property Owner Delinquency***" shall mean the occurrence of the following events: (1) an owner of any portion of the IH Property fails to timely pay an assessment payment; and (2) the funds then held in the Cashflow Delinquency Reserve Account (defined in the Indenture) for the IH Project are insufficient to cure the assessment delinquency, so there is a potential need to draw on the Bond Reserve Fund (defined in the Indenture). The term "***Senior Bond Replenishment***" shall mean the Property Owner Delinquency has been fully cured as follows: the property owner delinquency has been funded, the Cashflow Delinquency Reserve Account has been replenished to its balance prior to the Property Owner Delinquency occurring, and the Bond Reserve Fund has been replenished to its balance prior to the Property Owner Delinquency occurring. The term "***Senior Bond Replenishment Date***" shall mean the date that the Senior Bond Replenishment occurs. The term "***Holding Period***" shall mean that period of time commencing on the Senior Bond Replenishment Date and ending on the later to occur of (x) October 31, 2020 or (y) one (1) year after the Senior Bond Replenishment Date with no further Property Owner Delinquencies occurring during such time.

(g) The term "***Repayment Deadline***" shall mean October 31, 2025 for the IH Project and the IH Repayment Amount shall be fully due and payable by that deadline.

Capitalized terms not defined herein shall have the meanings ascribed to them in the Restated Cost Reimbursement Agreement.

4. **Disbursement of the IH Escrowed Funds.** Escrow Agent, subject to the provisions hereinafter set forth, shall disburse funds from the IH Escrow Account as follows:

(a) **IH City Share.** The IH City Share shall be disbursed to the City to repay the IH Repayment Amount upon the earlier of (i) the applicable Repayment Deadline or (ii) upon the City reimbursing the Trustee for applicable amounts, as further described in Exhibit B (City Share). Notwithstanding the foregoing, if the IH City Share is greater than the IH Current Outstanding Balance, then the IH City Share shall be held in the IH City Escrow Account and shall not be disbursed until such time as additional reimbursement funds related to the IH Project are delivered by the City to the Trustee, at which time the IH City Share shall be released to the City in an amount not to exceed the then-current IH Current Outstanding Balance. Any portion of the IH Escrow Account (whether the IH City Share or IH Bond Share) to be disbursed to the City as set forth in this Paragraph 4 shall be made or transferred to the Austin Water Utility.

(b) **IH Bond Share.**

- i. *No Property Owner Delinquency.* The IH Bond Share shall be held in escrow and shall be disbursed to the City (or become part of the IH City Share) following receipt by Escrow Agent and the Parties of the appropriate Request Form and compliance with Paragraph 5 and 6 below, on (1) the date the Senior Bonds related to the IH Project are no longer outstanding, or (2) on the date of the Repayment Deadline provided there is no Property Owner Delinquency or a Holding Period then in effect and the IH Developer has not paid the City in full by the Repayment Deadline, or (3) after October 31, 2020 when the IH City Share and IH Bond Share in total are sufficient to fully repay the IH Maximum Outstanding Balance to the City, provided there is no Property Owner Delinquency or a Holding Period then in effect.
- ii. *Occurrence of Property Owner Delinquency.* Upon the occurrence of a Property Owner Delinquency, the entire IH Bond Share then held in the IH Escrow Account shall be disbursed to the Trustee following receipt by Escrow Agent and the Parties of the appropriate Request Form and compliance with Paragraph 5 and 6 below, and the City shall direct the Trustee to apply such IH Bond Share funds in the following order: (1) first, to fund the assessment delinquency after the funds within the Cashflow Delinquency Reserve Account (the "*CDRA*", as defined in the Indenture) have been exhausted, (2) next to replenish the Bond Reserve Fund, (3) third, to replenish the CDRA, and (4) last, any remaining funds shall be held by the Trustee in the CDRA as additional funding for repayment of the Senior Bonds or for repayment to the City as set forth herein (said excess funds shall be

referred to herein as the "*IH Excess Cure Funds*"). Further, after a Property Owner Delinquency has occurred and until the Holding Period has expired without any further Property Owner Delinquencies occurring during such Holding Period, any future IH Bond Share amounts placed into the IH Bond Escrow Account upon a Third Party Sale shall be promptly released to the Trustee to be applied in the order as set forth in items (1) through (4) above. Any amounts placed in the CDRA during such Property Owner Delinquency or Holding Period pursuant to item (4) above shall be part of the IH Excess Cure Funds. The Escrow Agent shall notify all Parties promptly upon the expiration of any Holding Period. Upon the expiration of the Holding Period, the City shall direct the Trustee to release 1/3 of the IH Excess Cure Funds to the Escrow Agent to be held in the IH Bond Escrow Account and to be disbursed in accordance with Section 4(b)(i) above. Furthermore, on any Third Party Sale occurring upon or after the expiration of the Holding Period (y) an amount equal to 2/3rd of the IH Bond Share shall be promptly released to the Trustee to be held in the CDRA, but such portion of the IH Bond Share delivered to the Trustee after the expiration of the Holding Period shall not be part of the IH Excess Cure Funds; and (z) an amount equal to 1/3rd of the IH Bond Share shall be held in the IH Bond Escrow Account and shall be disbursed in accordance with Section 4(b)(i) above.

5. **Request Form; Notice.**

(a) By Escrow Agent. Simultaneously with any Third Party Sale of all or any portion of the IH Property, Escrow Agent will submit the form set forth on Exhibit C attached hereto to the Parties ("*Request Form*"). Also, at least thirty (30) days prior to each of the Repayment Deadlines, to the extent the amount due on such Repayment Deadline has not been fully paid, the Escrow Agent shall submit the Request Form to the Parties hereto.

(b) By City. Upon the City's payment to the Trustee of any portion of the Maximum Reimbursement Amount attributable to the IH Property, the City shall promptly submit the Request Form to the IH Developer and Escrow Agent.

(c) By Senior Bond Holder or Trustee. If a default occurs under the Senior Bonds, Senior Bond Holder or City shall cause the Trustee to submit the Request Form to the Escrow Agent and the other Parties within ten (10) days after said default to notify the Escrow Agent and the other Parties of such default and to request a release of the IH Bond Share held in the IH Bond Escrow Account.

6. **Approval or Dispute of Request Form.** Upon receipt of a Request Form, if additional information is required to be provided by the Escrow Agent, the Escrow Agent will have a period of ten (10) days after the date of submission of the Request Form to provide any

such information requested by the requesting Party, by completing or updating such Request Form with the additional information and sending such updated Request Form to all other Parties. Upon receipt of a fully complete Request Form, the Parties shall have ten (10) business days to approve or dispute the information contained in the Request Form. If a Party disputes any of the information contained in the Request Form, such Party shall provide written notice ("*Dispute Notice*") to Escrow Agent and the other Parties containing information specifying the nature or reasoning of why the information contained in the Request Form is being disputed and shall also provide how, in the disputing Party's opinion, the information could be modified in order to make it accurate (if applicable). If a Party does not approve the Request Form or submit a Dispute Notice in accordance with the foregoing sentence prior to the expiration of the 10 business day period noted above, then the Escrow Agent shall send a second notice, giving the non-responding Party five (5) additional business days from the date of the second notice to respond. If any Party fails to respond within the foregoing 5 business day period, then the non-responding Party shall be deemed to have approved the information contained in the Request Form. If the Parties approve (or are deemed to have approved) the Request Form in accordance with the foregoing procedure, then Escrow Agent will disburse the IH Escrowed Funds in accordance with the Request Form, Section 4 above and Exhibit B attached hereto within five (5) days after the date on which the applicable notice period ends. If, however, a Party timely disputes the Request Form in accordance with the foregoing, then the Parties agree to make a good faith effort to resolve the dispute within 15 days after delivery of the Dispute Notice. The Escrow Agent will disburse the IH Escrowed Funds five (5) days after receipt of written notice that the dispute has been resolved and a description of such resolution, in accordance with the resolved dispute, Section 4 above and Exhibit B. Notwithstanding the foregoing, the Escrow Agent shall release to the IH Developer that portion of any net proceeds on a Third Party Sale which is not part of the SSA without the consent of any other Party.

7. Termination of Requirement to Place Funds in Escrow.

(a) Termination of IH Bond Share. Upon the date the Senior Bonds for the IH Project are no longer outstanding, the IH Developer's obligation to escrow the IH Bond Share shall automatically terminate and the SSA shall thereafter consist of the IH City Share; provided, however this Escrow Agreement shall not terminate except as set forth in Section 8 below. At such time, the Senior Bond Holder shall no longer be a party to this Escrow Agreement and the remaining Parties shall have no further obligations hereunder to provide notices (including the Request Form and Dispute Notice) to Senior Bond Holder.

(b) Termination of IH City Share and IH Bond Share. Once the IH Escrow Account includes an amount equal to the IH Maximum Outstanding Balance or once the IH Repayment Amount has been paid in full to the City, the IH Developer's obligation to escrow the IH City Share and IH Bond Share shall automatically terminate; provided, however this Escrow Agreement shall not terminate except as set forth in Section 8 below. If at any time thereafter, the IH Escrowed Funds are less than the IH Maximum Outstanding Balance (due to disbursement of the IH Bond Share as provided for in this Escrow Agreement to cure a Property Owner Delinquency), then the IH Developer shall resume

escrowing the IH City Share and IH Bond Share (if applicable) until the funds held in the IH Escrow Account again equal the IH Maximum Outstanding Balance.

8. **Termination of Escrow Agreement.** This Escrow Agreement will terminate one (1) business day after the earlier to occur of (i) the IH Repayment Amount has been fully paid to the City or (ii) all IH Property has been released from the Transfer Restriction Document and all IH Escrowed Funds have been disbursed as set forth herein (including any IH Excess Cure Funds held by the Trustee). Upon the termination of this Escrow Agreement, any remaining funds from the IH Escrowed Funds shall be disbursed as set forth herein; provided that in the event the City does not reimburse the Trustee for the Maximum Reimbursement Amount, which then results in excess funds being held in the IH Escrow Account above and beyond the IH Repayment Amount due to the City, then such excess funds from the IH Developer held in escrow shall be promptly released to the IH Developer.

9. **Concerning the Escrow Agent.** The Parties agree that the following provisions shall control with respect to the rights, duties, liabilities, privileges and immunities of Escrow Agent:

(a) Escrow Agent is not a party to, and is not bound by, or charged with notice of, any Escrow Agreement out of which this escrow may arise, other than this Escrow Agreement.

(b) Escrow Agent acts hereunder as a depository only, and is not responsible or liable in any manner whatever for the sufficiency, correctness, genuineness or validity of the subject matter of the escrow or any part thereof, or for the form or execution thereof, or for the identity or authority of any person executing or depositing the same.

(c) In the event Escrow Agent becomes involved in litigation in connection with this escrow, the IH Developer and Senior Bond Holder agree to indemnify and save Escrow Agent harmless from all loss, costs, damages, expenses and attorney's fees suffered or incurred by Escrow Agent as a result thereof. The obligations of the Parties under this paragraph shall be performable at the principal office of Escrow Agent in Austin, Texas.

(d) Escrow Agent shall be protected in acting upon any written notice, waiver, consent, certificate, receipt, authorization, power of attorney or other paper or document which Escrow Agent in good faith believes to be genuine and what it purports to be.

(e) Escrow Agent shall not be liable for anything which it may do or refrain from doing in connection herewith, except its own gross negligence or willful misconduct.

(f) Escrow Agent may consult with legal counsel in the event of any dispute or question as to the construction of any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in accordance with the opinion and instruction of such counsel.

(g) In the event of any claims or demand upon Escrow Agent are made in connection with any provision of this Escrow Agreement, or in the event the Escrow Agent, in good faith, shall be in doubt as to what action it should take hereunder, Escrow Agent may, in its sole discretion, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such this Escrow Agreement continues or such doubt exists, and in such event, the Escrow Agent shall not be or become liable in any way or to any person for its failure or refusal to act, and the Escrow Agent shall be entitled to continue to so refrain from acting until (i) the rights of all interested parties shall have been fully and finally adjudicated by a court of competent jurisdiction, or (ii) all differences shall have been adjusted and all doubt resolved by Escrow Agreement among all of the interested parties and Escrow Agent shall have been notified thereof in writing signed by all such parties. Notwithstanding the foregoing, in the event Escrow Agent shall be in doubt as to what action it should take hereunder at any time during the term of this Escrow Agreement, Escrow Agent shall have the right, in its sole and absolute discretion, to file an interpleader action in the District Court of Travis County, Texas, and interplead all documents and instruments held by it into the registry of said Court, and in such event, all costs, expenses and attorney's fees incurred by Escrow Agent in filing such interpleader action shall be paid by the Parties or from the funds so interplead. The rights of Escrow Agent under this paragraph are cumulative to all other rights which it may have by law or otherwise.

10. **Notices.** Any notice, instrument or other communication required or permitted to be given by one of the parties hereto to the other under this Escrow Agreement shall be considered as properly given if in writing and (a) hand delivered, or (b) mailed by registered or certified mail, return receipt requested and postage prepaid, or (c) sent by telecopy or electronic mail, in each case at the address below.

If to Senior Bond Holder: ORIX Public Finance LLC
1717 Main Street, 9th Floor
Dallas, Texas 75201
Attn: Kandice Stephens
Telephone: (214) 237-2135
Facsimile: (214) 237-2018
Email: kstephens@orix.com

If to City: City of Austin
PO Box 1088
Austin, Texas 78767
Attn: Director, Austin Water
Telephone: (512) 974-7890
Facsimile: (512) 370-3838
Email: bart.jennings@austintexas.gov

With a copy to: City of Austin
PO Box 1088

Austin, Texas 78767
Attn: Law Department
Telephone: (512) 974-2268
Facsimile: (512) 974-6490
Email: sharon.smith@austintexas.gov

If to IH Developer: Taurus of Texas
c/o Douglas H. Gilliland
9285 Huntington Square
North Richland Hills, Texas 76180
Telephone: (817) 788-1000
Facsimile: (817) 788-1670
Email: DouglasG33@aol.com

With a copy to: Talley J. Williams
Metcalf Williams, LLP
301 Congress Avenue, Suite 1075
Austin, Texas 78701
Telephone: (512) 961-8844
Facsimile: (512) 551-4943
Email: twilliams@metcalfewilliams.com

If to Escrow Agent: Nancy Grasshoff
Heritage Title Company of Austin, Inc.
401 Congress Avenue, Suite 1500
Austin, Texas 78701
Telephone: (512) 505-5000
Facsimile: (512) 505-5024
Email: ngrasshoff@heritage-title.com

11. **Consultation with Legal Counsel.** Escrow Agent may consult with its counsel or other counsel satisfactory to it concerning any question relating to its duties or responsibilities under this Escrow Agreement or otherwise in connection herewith and shall not be liable for any action taken, suffered or omitted by Escrow Agent in good faith upon the advice of such counsel. Escrow Agent may act through its officers, employees, agents and attorneys.

12. **Compensation and Reimbursement of Expenses.** For its ordinary services hereunder, Escrow Agent shall be entitled to an initial fee of \$0.00, payable concurrently with its acceptance hereof by the IH Developer, and to additional compensation as follows:

In the event that Escrow Agent performs any service not specifically provided hereinabove, or that there is any assignment or attachment of any interest in the subject matter of this escrow or any modification thereof, or that any controversy arises hereunder, or that Escrow Agent is made a party to, or intervenes in, any litigation pertaining to this escrow or the subject matter thereof, Escrow Agent shall be reasonably compensated therefor and reimbursed for all costs and expenses occasioned thereby, and the Senior Bond Holder and

IH Developer agree jointly and severally to pay the same, and to indemnify Escrow Agent against any loss, liability or expense incurred in any act or thing done by it hereunder, as permitted by law. It is understood and agreed that in the case of any controversy, Escrow Agent may refrain from acting in any manner until it receives written Escrow Agreement from all parties hereto, or Escrow Agent may interplead the subject matter of this escrow into any court of competent jurisdiction, and the act of such interpleader shall immediately relieve Escrow Agent of its duties, liabilities and responsibilities hereunder.

13. **Resignation.** Escrow Agent may resign upon ten (10) days' prior written notice to the Parties, and upon joint instructions of the Parties, shall deliver the IH Escrowed Funds to any designated substitute Escrow Agent mutually selected by the Parties. If the Parties fail to mutually designate a substitute Escrow Agent within ten (10) days after the giving of such notice, Escrow Agent may, in its sole discretion and its sole option, institute a bill of interpleader as contemplated herein.

14. **Severability.** If one or more of the provisions shall for any reason be held to be invalid, illegal or unenforceable in any respect under applicable law, such invalidity, illegality or unenforceability shall not affect any other provisions, and this Escrow Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Escrow Agreement.

15. **Assignment.** The IH Developer may not assign its rights and obligations under this Escrow Agreement (except to a Designated Successor or Assign), without the approval of the City. In the event the Senior Bond Holder sells Senior Bonds to multiple holders, then Senior Bond Holder shall notify all Parties of such sale within three (3) business days of such sale and shall designate one bond holder, in writing, to act on behalf of all bond holders and such designee shall be considered the "Senior Bond Holder" hereunder; and at any time after such designation, the Parties hereto shall provide notice (including Request Forms) to the designated Senior Bond Holder and the designee shall be entitled to act on behalf of all the bond holders, including giving notices required hereunder and submitting a Request Form where applicable.

16. **General.** The section headings contained in this Escrow Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Escrow Agreement. This Escrow Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. The terms and provisions of this Escrow Agreement constitute the entire Escrow Agreement between the parties hereto. This Escrow Agreement or any provision of the Escrow Agreement may be amended, modified, waived or terminated only by written instrument duly signed by the parties or their successors and assigns. This Escrow Agreement shall inure to the benefit of and be binding upon the parties, and their respective heirs, devisees, executors, administrators, personal representatives, successors, trustees, receivers and assigns. Nothing in this Escrow Agreement, express or implied, is intended to confer upon any other person rights or remedies under or by reason of this Escrow Agreement. To the extent there is any conflict between this Escrow Agreement and the Restated Cost Reimbursement Agreement,

the terms of the Restated Cost Reimbursement Agreement shall control as between the Parties and not Escrow Agent.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement in multiple counterparts, each of which is and shall be considered an original for all intents and purposes, effective as of the date first above written.

City:

CITY OF AUSTIN

By: _____

Name: Rudy Garza

Title: Assistant City Manager

IH Developer:

CLUB DEAL 116 INDIAN HILLS TX, LIMITED
PARTNERSHIP, a Delaware limited partnership
qualified to do business in Texas

By: CD116 Indian Hills Tx, LLC, a Delaware
limited liability company

Its: General Partner

By: _____

Douglas H. Gilliland, Manager

Senior Bond Holder:

ORIX PUBLIC FINANCE LLC, a Delaware limited
liability company

By: _____

Cliff Weiner, President & CEO

Escrow Agent:

HERITAGE TITLE COMPANY OF AUSTIN,
INC., a Texas corporation

By: _____

Name: _____

Title: _____

EXHIBIT A

(IH Property)

EXHIBIT B
(IH Bond Share)

<u>Trigger for release of IH Bond Share:</u>	<u>Amount of IH Bond Share To Be Released:</u>	<u>Beneficiary of Funds:</u>
1. Senior Bonds are retired/paid off	Entire IH Bond Share	City
2. Occurrence of a Property Owner Delinquency	Entire IH Bond Share [to be applied as set forth in Paragraph 4(b)(ii)]	Trustee
3. During any Holding Period	Entire IH Bond Share [to be applied as set forth in Paragraph 4(b)(ii)]	Trustee
4. After the expiration of a Holding Period	2/3 of IH Bond Share	Trustee
5. Funds are needed to satisfy the amount due on a Repayment Deadline (above and beyond the IH City Share)	Amount of IH Bond Share necessary to satisfy the portion of the IH Repayment Amount due on such Repayment Deadline	City
6. After October 31, 2020, funds are needed to pay the IH Maximum Outstanding Balance in full	Amount of IH Bond Share necessary to satisfy the IH Maximum Outstanding Balance	City

The triggers are listed in order of priority. If more than one trigger exists at any given time, the higher rule in the matrix controls.

EXHIBIT B
(IH City Share)

<u>Trigger for release of IH City Share:</u>	<u>Amount of IH City Share To Be Released:</u>	<u>Beneficiary of Funds:</u>
Upon the City's payment to the Trustee of any portion of the Maximum Reimbursement Amount attributable to the IH Property	IH City Share in an amount not to exceed the IH Current Outstanding Balance	City
Third Party Sale	IH City Share in an amount not to exceed the IH Current Outstanding Balance	City
Occurrence of a Repayment Deadline	IH City Share in an amount equal to the balance due on such Repayment Deadline that remains due as of such date	City

EXHIBIT C
(Request Form)

**INDIAN HILLS PROJECT REQUEST FORM RELATING TO
NOTICE OF THIRD PARTY SALE, REIMBURSEMENTS, AND PAYMENTS**

Date: _____, 20__

To: [City of Austin (the "City")
Heritage Title Company of Austin, Inc. (the "Escrow Agent")
ORIX Public Finance LLC ("Senior Bond Holder")
Club Deal 116 Indian Hills Tx, Limited Partnership (the "IH Developer")]

From: _____

Re: First Amendment to the "Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions" ("Restated Cost Reimbursement Agreement"); and Escrow Agreement by and among the City, Escrow Agent, Senior Bond Holder, and IH Developer dated _____, 2011 ("IH Escrow Agreement")

PURPOSE OF NOTICE (check one)

___ **1. Notice of Third Party Sale (Escrow Agent to complete):**

Closing Date for Third Party Sale: _____, 20__

Subject Property: See Exhibit "A" attached

A. IH Bond Share of SSA: \$ _____

B. IH City Share of SSA: \$ _____

C. Total SSA for Third Party Sale: \$ _____ (A + B)

___ **2. Notice of Additional Reimbursement Amount for IH Project Paid to Trustee (City to complete):**

Date of Additional Reimbursement to Trustee: _____, 20__

D. Additional Reimbursement Amount: \$ _____

___ **3. Notice of Repayment Deadline (Escrow Agent to complete):**

Date of Repayment Deadline: _____, 20__

E. Amount Due on Repayment Deadline: \$ _____

___ **4. Notice of Property Owner Delinquency Under Senior Bonds (Senior Bond Holder to complete):**

Date of Property Owner Delinquency: _____, 20__

F. Delinquency Amount under Senior Bonds: \$ _____

___ **5. Notice that SSA No Longer Required (IH Developer or Escrow Agent to complete)**

Balance in IH Escrow Account equals IH Maximum Outstanding Balance. (I = Q)

___ **6. Notice that Senior Bonds Are No Longer Outstanding (Senior Bond Holder to complete)**

Date Senior Bonds retired or paid in full: _____, 20__

BALANCE IN ESCROW ACCOUNT (Escrow Agent to complete)

(amounts after Third Party Sale, if applicable, and prior to disbursement)

- G. IH Bond Share in IH Escrow Account: \$ _____ (prior balance + A)
H. IH City Share in IH Escrow Account: \$ _____ (prior balance + B)
I. Total Amount in IH Escrow Account: \$ _____ (G + H)

DISBURSEMENT OF ESCROWED FUNDS (Requesting Party to complete; Escrow Agent to verify)

- J. Portion of IH Bond Share to release to City: \$ _____
K. Portion of IH Bond Share to release to Trustee: \$ _____
(only if Property Owner Delinquency has occurred and Holding Period in effect)
L. Portion of IH City Share to release to City: \$ _____

BALANCES AFTER TRANSACTION AND DISBURSEMENT (Escrow Agent to complete):

- M. Maximum Reimbursement Amount
(attributable to IH Project): \$ _____
N. Portion of Maximum Reimbursement Amount paid
to Trustee to date (attributable to IH Project): \$ _____
O. IH Repayment Amount repaid to date: \$ _____
P. IH Current Outstanding Balance: \$ _____ (N - O)
Q. IH Maximum Outstanding Balance: \$ _____ (M - O)
R. Remaining IH Bond Share in IH Escrow Account: \$ _____ (G - J - K)
S. Remaining IH City Share in IH Escrow Account: \$ _____ (H - L)
Total Amount in IH Escrow Account: \$ _____ (R + S)
(not to exceed IH Maximum Outstanding Balance)

RELEASE OF PROPERTY (if applicable):

Property to be released from Transfer Restriction Notice: See Exhibit "B" attached

By their signature below, the parties hereto acknowledge that (i) to the parties' knowledge, the amounts set forth above are accurate as of the date of this Notice, (ii) payments disbursed to the City shall be made or transferred to the Austin Water Utility, and (iii) the Escrow Agent shall have the right to release the IH Escrowed Funds in the amount and to the parties as set forth in the IH Escrow Agreement.

If Exhibit "B" is attached hereto, then by their signature below, the parties hereto acknowledge that execution of this Request Form, in accordance with the Restated Cost Reimbursement Agreement, shall be considered approval for the IH Developer to execute and record a Release in the Official Public Records of Travis County, Texas releasing the property described in Exhibit "B" from the Notice Regarding Transfer Restrictions and Requirements recorded as Document No. _____ in the Official Public Records of Travis County, Texas.

[SIGNATURE PAGE FOR INDIAN HILLS PROJECT REQUEST FORM]

IH Developer:

CLUB DEAL 116 INDIAN HILLS TX, LIMITED PARTNERSHIP,
a Delaware limited partnership qualified to do business in Texas

By: CD 116 Indian Hills Tx, LLC, a Delaware limited liability company, its General Partner

By: _____
Douglas H. Gilliland, Manager

Date: _____, 20__

City:

CITY OF AUSTIN

By: _____

Name: _____

Title: _____

Date: _____, 20__

Senior Bond Holder:

ORIX Public Finance LLC, a Delaware limited liability company

By: _____
Cliff Weiner, President & CEO

Date: _____, 20__

Escrow Agent:

HERITAGE TITLE COMPANY OF AUSTIN, INC., a Texas corporation

By: _____

Name: _____

Title: _____

Date: _____, 20__

ESCROW AGREEMENT
(Whisper Valley)

This Escrow Agreement (the "*Escrow Agreement*") is made and entered into as of this _____ day of _____, 2011 ("*Effective Date*"), by and between ORIX PUBLIC FINANCE LLC, a Delaware limited liability company ("*Senior Bond Holder*"), the CITY OF AUSTIN, a Texas municipal corporation ("*City*"), CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP ("*WV Developer*") and HERITAGE TITLE COMPANY OF AUSTIN, INC. ("*Escrow Agent*"). WV Developer, Senior Bond Holder and City are sometimes referred to herein singularly as a "*Party*" and collectively referred to herein as the "*Parties*".

RECITALS

WHEREAS, as of the Effective Date hereof, the WV Developer owns all of the real property described and/or depicted in Exhibit "A" attached hereto (the "*WV Property*" or "*Project*");

WHEREAS, on or before the Effective Date, the WV Developer entered into that certain Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions (as amended, the "*Restated Cost Reimbursement Agreement*"), by and among the City, the WV Developer, and Club Deal 116 Indian Hills Tx, Limited Partnership;

WHEREAS, pursuant to the Restated Cost Reimbursement Agreement, the WV Developer agreed to escrow net proceeds from certain sales of all or any portion of the WV Property with Escrow Agent;

WHEREAS, those certain City of Austin, Texas Special Assessment Revenue Bonds, Senior Series 2011 (Whisper Valley Public Improvement District) ("*Senior Bonds*") have been issued by the City to fund, among other things, the construction of certain infrastructure more particularly described in the Restated Cost Reimbursement Agreement;

WHEREAS, Senior Bond Holder is the current holder of the Senior Bonds and therefore, so long as the Senior Bonds are outstanding, Senior Bond Holder has an interest in seeing that the WV First Repayment Amount is paid by WV Developer so that this obligation encumbering the WV Property will be released upon full payment thereof; and

WHEREAS, the Parties hereby agree that such funds shall be held in escrow and disbursed as set forth in this Escrow Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, WV Developer, City, Senior Bond Holder and Escrow Agent agree as follows:

1. **Deposit of WV Escrowed Funds.** Upon a Third Party Sale (defined below) of any portion of the WV Property, the WV Developer shall place the SSA (defined below) into escrow accounts with the Escrow Agent ("*WV Escrowed Funds*"). Except as set forth herein, all or a portion of the WV Escrowed Funds placed into escrow by the WV Developer shall be used to fund the WV First Repayment Amount and Alternative Line Repayment Amount.

2. **WV Escrow Account.** Escrow Agent will open two (2) interest-bearing accounts into which the WV Escrowed Funds will be deposited, with the WV City Share being placed into one account (the "*WV City Escrow Account*") and the WV Bond Share being placed into the other account (the "*WV Bond Escrow Account*"). The WV City Escrow Account and WV Bond Escrow Account are collectively referred to herein as the "*WV Escrow Account*"). All interest or other income earned or accrued on the WV Escrowed Funds shall be held for the benefit of the City and distributed pursuant to this Escrow Agreement. Withdrawals from the WV Escrow Account shall be made only pursuant to the terms and provisions of this Escrow Agreement. Any fees charged by the Escrow Agent shall be paid by the WV Developer or out of the WV Developer's gross proceeds from a Third Party Sale (excluding the SSA).

3. **Definitions.**

(a) The "*SSA*" (sales set aside) shall be an amount equal to:

- i. the net proceeds received by the WV Developer on a Third Party Sale, multiplied by fifteen percent (15%) ("*WV Bond Share*") until the Senior Bonds for the WV Project are no longer outstanding; plus
- ii. the net proceeds received by the WV Developer on a Third Party Sale, multiplied by twenty percent (20%) ("*WV City Share*") until the WV First Repayment Amount has been paid in full to the City or the WV Maximum Outstanding Balance (excluding the Alternative Line portion of the WV Maximum Outstanding Balance) is held in the WV City Escrow Account for the benefit of the City. Thereafter, the WV City Share shall be reduced to fifteen percent (15%) of the net proceeds received by the WV Developer on a Third Party Sale until the Alternative Line Repayment Amount is paid in full to the City or the WV Maximum Outstanding Balance related to the Alternative Line is held in escrow.

(b) The term "*Third Party Sale*" shall mean the initial sale, conveyance, or transfer of any portion of the WV Property by the WV Developer to any person or entity. A transfer or conveyance of all of the remaining portion of the Property to (A) an affiliate of the WV Developer which does not involve the use of any amount of cash ("*Affiliate*"), or (B) a joint venture arrangement of which the WV Developer (or an Affiliate of the WV Developer) is a part, and which does not involve the use of any amount of cash ("*Joint Venture*"), shall not be considered a Third Party Sale. A transfer or conveyance of the remaining portion of the WV Property to (C) a Designated Successor or Assign (as

defined in the Restated Cost Reimbursement Agreement) shall not be considered a Third Party Sale. If the WV Developer has transferred or conveyed all of the remaining portion of the WV Property to an Affiliate or Joint Venture, then the term "WV Developer" in this Escrow Agreement shall be deemed to be the succeeding Affiliate or Joint Venture. If the condition of either (A), (B), or (C) applies to such transfer or conveyance, then the WV Developer shall not be required to place the SSA into the WV Escrow Account for that transaction, but (subject to the other terms and provisions hereof) the SSA shall be placed into the WV Escrow Account on any subsequent Third Party Sale of the WV Property that was subject to such transfer or conveyance.

(c) The term "**WV Current Outstanding Balance**" shall mean an amount equal to the then-current WV First Repayment Amount and Alternative Line Repayment Amount due by the WV Developer to the City (based on the portion of the Maximum Reimbursement Amount delivered as of the then-current date) less the portion of the WV First Repayment Amount and Alternative Line Repayment Amount previously repaid to the City by the WV Developer as of such date.

(d) The term "**WV Maximum Outstanding Balance**" shall mean an amount equal to the difference between the WV First Repayment Amount and Alternative Line Repayment Amount, and the portion of the WV First Repayment Amount and Alternative Line Repayment Amount that has been repaid to the City by the WV Developer as of the then-current date.

(e) The term "**WV First Repayment Amount**" shall mean the amount that the WV Developer shall repay the City, which is an amount equal to that portion of the Maximum Reimbursement Amount that is associated with the WV Supplemental Costs, CCN Release Fee, the WV Developer's share (i.e. 75%) of the non-oversizing portion of Line 1, and the non-oversizing portion of Line 2. The term "**Alternative Line Repayment Amount**" shall mean the amount that the WV Developer shall repay the City for the Alternative Line, which is an amount equal to that portion of the Maximum Reimbursement Amount that is associated with the non-oversizing portion of the Alternative Line. The term "**WV First Repayment Amount**" and "**Alternative Line Repayment Amount**" shall mean collectively the maximum amount that would be repaid to the City by the WV Developer assuming the WV Developer and the Trustee, in combination, have been paid the entire Maximum Reimbursement Amount associated with the WV Project.

(f) The term "**Property Owner Delinquency**" shall mean the occurrence of the following events: (1) an owner of any portion of the WV Property fails to timely pay an assessment payment; and (2) the funds then held in the Cashflow Delinquency Reserve Account (defined in the Indenture) for the WV Project are insufficient to cure the assessment delinquency, so there is a potential need to draw on the Bond Reserve Fund (defined in the Indenture). The term "**Senior Bond Replenishment**" shall mean the Property Owner Delinquency has been fully cured as follows: the property owner delinquency has been funded, the Cashflow Delinquency Reserve Account has been replenished to its balance prior to the Property Owner Delinquency occurring, and the

Bond Reserve Fund has been replenished to its balance prior to the Property Owner Delinquency occurring. The term “**Senior Bond Replenishment Date**” shall mean the date that the Senior Bond Replenishment occurs. The term “**Holding Period**” shall mean that period of time commencing on the Senior Bond Replenishment Date and ending on the later to occur of (x) the first Repayment Deadline (i.e., October 31, 2020) or (y) one (1) year after the Senior Bond Replenishment Date with no further Property Owner Delinquencies occurring during such time.

(g) The term “**Repayment Deadline**” shall mean October 31, 2020; October 31, 2025; October 31, 2030; and the date which is the fifth (5th) anniversary of the City’s acceptance of entire Alternative Line (Line 5 or both Line 6A and 6B). The WV First Repayment Amount (or applicable portions thereof) and the Alternative Line Repayment Amount shall be fully due and payable to the City on the applicable Repayment Deadlines, as follows:

October 31, 2020	WW Supplemental Costs and CCN Release Fee	WV Developer
October 31, 2025	WV Developer’s share of Line 1	WV Developer
October 31, 2030	Line 2	WV Developer
5 years after City’s acceptance of entire Alternative Line (Line 5 or both Line 6A and 6B)	Alternative Line	WV Developer

Capitalized terms not defined herein shall have the meanings ascribed to them in the Restated Cost Reimbursement Agreement.

4. **Disbursement of the WV Escrowed Funds**, Escrow Agent, subject to the provisions hereinafter set forth, shall disburse funds from the WV Escrow Account as follows:

(a) **WV City Share**. The WV City Share shall be disbursed to the City to repay the WV First Repayment Amount and Alternative Line Repayment Amount upon the earlier of (i) the applicable Repayment Deadline or (ii) upon the City reimbursing the Trustee for applicable amounts, as further described in Exhibit B (City Share). Notwithstanding the foregoing, if the WV City Share is greater than the WV Current Outstanding Balance, then the WV City Share shall be held in the WV City Escrow Account and shall not be disbursed until such time as additional reimbursement funds related to the WV Project are delivered by the City to the Trustee, at which time the WV City Share shall be released to the City in an amount not to exceed the then-current WV Current Outstanding Balance. Any portion of the WV Escrow Account (whether the WV

City Share or WV Bond Share) to be disbursed to the City as set forth in this Paragraph 4 shall be made or transferred to the Austin Water Utility.

(b) WV Bond Share.

- i. *No Property Owner Delinquency.* The WV Bond Share shall be held in escrow and shall be disbursed to the City (or become part of the WV City Share) following receipt by Escrow Agent and the Parties of the appropriate Request Form and compliance with Paragraphs 5 and 6 below, on (1) the date the Senior Bonds related to the WV Project are no longer outstanding, or (2) on the date of the Repayment Deadline provided there is no Property Owner Delinquency or a Holding Period then in effect and the WV Developer has not paid the City in full by the Repayment Deadline, or (3) after the first Repayment Deadline (i.e., October 31, 2020) when the WV City Share and WV Bond Share in total are sufficient to fully repay the WV Maximum Outstanding Balance (excluding the Alternative Line portion of the WV Maximum Outstanding Balance) to the City, provided there is no Property Owner Delinquency or a Holding Period then in effect, or (4) after the first Repayment Deadline (i.e., October 31, 2020) when the WV City Share and WV Bond Share in total are sufficient to fully repay the portion of the WV Maximum Outstanding Balance related to the Alternative Line to the City, provided there is no Property Owner Delinquency or a Holding Period then in effect.
- ii. *Occurrence of Property Owner Delinquency.* Upon the occurrence of a Property Owner Delinquency, the entire WV Bond Share then held in the WV Escrow Account shall be disbursed to the Trustee following receipt by Escrow Agent and the Parties of the appropriate Request Form and compliance with Paragraphs 5 and 6 below, and the City shall direct the Trustee to apply such WV Bond Share funds in the following order: (1) first, to fund the assessment delinquency after the funds within the Cashflow Delinquency Reserve Account (the "*CDRA*", as defined in the Indenture) have been exhausted, (2) next to replenish the Bond Reserve Fund, (3) third, to replenish the CDRA, and (4) last, any remaining funds shall be held by the Trustee in the CDRA as additional funding for repayment of the Senior Bonds or for repayment to the City as set forth herein (said excess funds shall be referred to herein as the "*WV Excess Cure Funds*"). Further, after a Property Owner Delinquency has occurred and until the Holding Period has expired without any further Property Owner Delinquencies occurring during such Holding Period, any future WV Bond Share amounts placed into the WV Bond Escrow

Account upon a Third Party Sale shall be promptly released to the Trustee to be applied in the order as set forth in items (1) through (4) above. Any amounts placed in the CDRA during such Property Owner Delinquency or Holding Period pursuant to item (4) above shall be part of the WV Excess Cure Funds. The Escrow Agent shall notify all Parties promptly upon the expiration of any Holding Period. Upon the expiration of the Holding Period, the City shall direct the Trustee to release 1/3 of the WV Excess Cure Funds to the Escrow Agent to be held in the WV Bond Escrow Account and to be disbursed in accordance with Section 4(b)(i) above. Furthermore, on any Third Party Sale occurring upon or after the expiration of the Holding Period (y) an amount equal to 2/3rd of the WV Bond Share shall be promptly released to the Trustee to be held in the CDRA, but such portion of the WV Bond Share delivered to the Trustee after the expiration of the Holding Period shall not be part of the WV Excess Cure Funds; and (z) an amount equal to 1/3rd of the WV Bond Share shall be held in the WV Bond Escrow Account and shall be disbursed in accordance with Section 4(b)(i) above.

5. **Request Form; Notice.**

(a) **By Escrow Agent.** Simultaneously with any Third Party Sale of all or any portion of the WV Property, Escrow Agent will submit the form set forth on Exhibit C attached hereto to the Parties ("***Request Form***"). Also, at least thirty (30) days prior to each of the Repayment Deadlines, to the extent the amount due on such Repayment Deadline has not been fully paid, the Escrow Agent shall submit the Request Form to the Parties hereto.

(b) **By City.** Upon the City's payment to the Trustee of any portion of the Maximum Reimbursement Amount attributable to the WV Property, the City shall promptly submit the Request Form to the WV Developer and Escrow Agent. The WV Developer acknowledges that as of the Effective Date of this Escrow Agreement, the City has already reimbursed the WV Developer the amount of \$800,000 for the CCN Release Fee, and such the CCN Release Fee (which is part of the WV First Repayment Amount) is eligible for repayment by the WV Developer and disbursement of WV Escrowed Funds by the Escrow Agent to the City as set forth herein.

(c) **By Senior Bond Holder or Trustee.** If a default occurs under the Senior Bonds, Senior Bond Holder or City shall cause the Trustee to submit the Request Form to the Escrow Agent and the other Parties within ten (10) days after said default to notify the Escrow Agent and the other Parties of such default and to request a release of the WV Bond Share held in the WV Bond Escrow Account.

6. **Approval or Dispute of Request Form.** Upon receipt of a Request Form, if additional information is required to be provided by the Escrow Agent, the Escrow Agent will

have a period of ten (10) days after the date of submission of the Request Form to provide any such information requested by the requesting Party, by completing or updating such Request Form with the additional information and sending such updated Request Form to all other Parties. Upon receipt of a fully complete Request Form, the Parties shall have ten (10) business days to approve or dispute the information contained in the Request Form. If a Party disputes any of the information contained in the Request Form, such Party shall provide written notice ("**Dispute Notice**") to Escrow Agent and the other Parties containing information specifying the nature or reasoning of why the information contained in the Request Form is being disputed and shall also provide how, in the disputing Party's opinion, the information could be modified in order to make it accurate (if applicable). If a Party does not approve the Request Form or submit a Dispute Notice in accordance with the foregoing sentence prior to the expiration of the 10 business day period noted above, then the Escrow Agent shall send a second notice, giving the non-responding Party five (5) additional business days from the date of the second notice to respond. If any Party fails to respond within the foregoing 5 business day period, then the non-responding Party shall be deemed to have approved the information contained in the Request Form. If the Parties approve (or are deemed to have approved) the Request Form in accordance with the foregoing procedure, then Escrow Agent will disburse the WV Escrowed Funds in accordance with the Request Form, Section 4 above and Exhibit B attached hereto within five (5) days after the date on which the applicable notice period ends. If, however, a Party timely disputes the Request Form in accordance with the foregoing, then the Parties agree to make a good faith effort to resolve the dispute within 15 days after delivery of the Dispute Notice. The Escrow Agent will disburse the WV Escrowed Funds five (5) days after receipt of written notice that the dispute has been resolved and a description of such resolution, in accordance with the resolved dispute, Section 4 above and Exhibit B. Notwithstanding the foregoing, the Escrow Agent shall release to the WV Developer that portion of any net proceeds on a Third Party Sale which is not part of the SSA without the consent of any other Party.

7. **Termination of Requirement to Place Funds in Escrow.**

(a) **Termination of WV Bond Share.** Upon the date the Senior Bonds for the WV Project are no longer outstanding, the WV Developer's obligation to escrow the WV Bond Share shall automatically terminate and the SSA shall thereafter consist of the WV City Share; provided, however this Escrow Agreement shall not terminate except as set forth in Section 8 below. At such time, the Senior Bond Holder shall no longer be a party to this Escrow Agreement and the remaining Parties shall have no further obligations hereunder to provide notices (including the Request Form and Dispute Notice) to Senior Bond Holder.

(b) **Termination of WV City Share and WV Bond Share.** Once the WV Escrow Account includes an amount equal to the WV Maximum Outstanding Balance or once the WV First Repayment Amount and the Alternative Line Repayment Amount have been paid in full to the City, the WV Developer's obligation to escrow the WV City Share and WV Bond Share shall automatically terminate; provided, however this Escrow Agreement shall not terminate except as set forth in Section 8 below. If at any time thereafter, the WV Escrowed Funds are less than the WV Maximum Outstanding Balance (due to disbursement

of the WV Bond Share as provided for in this Escrow Agreement to cure a Property Owner Delinquency), then the WV Developer shall resume escrowing the WV City Share and WV Bond Share (if applicable) until the funds held in the WV Escrow Account again equal the WV Maximum Outstanding Balance.

8. **Termination of Escrow Agreement.** This Escrow Agreement will terminate one (1) business day after the earlier to occur of (i) the WV First Repayment Amount and Alternative Line Repayment Amount have been fully paid to the City or (ii) all WV Property has been released from the Transfer Restriction Document and all WV Escrowed Funds have been disbursed as set forth herein (including any WV Excess Cure Funds held by the Trustee). Upon the termination of this Escrow Agreement, any remaining funds from the WV Escrowed Funds shall be disbursed as set forth herein; provided that in the event the City does not reimburse the Trustee for the Maximum Reimbursement Amount, which then results in excess funds being held in the WV Escrow Account above and beyond the WV First Repayment Amount and Alternative Line Repayment Amount due to the City, then such excess funds from the WV Developer held in escrow shall be promptly released to the WV Developer.

9. **Concerning the Escrow Agent.** The Parties agree that the following provisions shall control with respect to the rights, duties, liabilities, privileges and immunities of Escrow Agent:

(a) Escrow Agent is not a party to, and is not bound by, or charged with notice of, any Escrow Agreement out of which this escrow may arise, other than this Escrow Agreement.

(b) Escrow Agent acts hereunder as a depository only, and is not responsible or liable in any manner whatever for the sufficiency, correctness, genuineness or validity of the subject matter of the escrow or any part thereof, or for the form or execution thereof, or for the identity or authority of any person executing or depositing the same.

(c) In the event Escrow Agent becomes involved in litigation in connection with this escrow, the WV Developer and Senior Bond Holder agree to indemnify and save Escrow Agent harmless from all loss, costs, damages, expenses and attorney's fees suffered or incurred by Escrow Agent as a result thereof. The obligations of the Parties under this paragraph shall be performable at the principal office of Escrow Agent in Austin, Texas.

(d) Escrow Agent shall be protected in acting upon any written notice, waiver, consent, certificate, receipt, authorization, power of attorney or other paper or document which Escrow Agent in good faith believes to be genuine and what it purports to be.

(e) Escrow Agent shall not be liable for anything which it may do or refrain from doing in connection herewith, except its own gross negligence or willful misconduct.

(f) Escrow Agent may consult with legal counsel in the event of any dispute or question as to the construction of any of the provisions hereof or its duties hereunder, and it

shall incur no liability and shall be fully protected in acting in accordance with the opinion and instruction of such counsel.

(g) In the event of any claims or demand upon Escrow Agent are made in connection with any provision of this Escrow Agreement, or in the event the Escrow Agent, in good faith, shall be in doubt as to what action it should take hereunder, Escrow Agent may, in its sole discretion, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such this Escrow Agreement continues or such doubt exists, and in such event, the Escrow Agent shall not be or become liable in any way or to any person for its failure or refusal to act, and the Escrow Agent shall be entitled to continue to so refrain from acting until (i) the rights of all interested parties shall have been fully and finally adjudicated by a court of competent jurisdiction, or (ii) all differences shall have been adjusted and all doubt resolved by Escrow Agreement among all of the interested parties and Escrow Agent shall have been notified thereof in writing signed by all such parties. Notwithstanding the foregoing, in the event Escrow Agent shall be in doubt as to what action it should take hereunder at any time during the term of this Escrow Agreement, Escrow Agent shall have the right, in its sole and absolute discretion, to file an interpleader action in the District Court of Travis County, Texas, and interplead all documents and instruments held by it into the registry of said Court, and in such event, all costs, expenses and attorney's fees incurred by Escrow Agent in filing such interpleader action shall be paid by the Parties or from the funds so interplead. The rights of Escrow Agent under this paragraph are cumulative to all other rights which it may have by law or otherwise.

10. **Notices.** Any notice, instrument or other communication required or permitted to be given by one of the parties hereto to the other under this Escrow Agreement shall be considered as properly given if in writing and (a) hand delivered, or (b) mailed by registered or certified mail, return receipt requested and postage prepaid, or (c) sent by telecopy or electronic mail, in each case at the address below.

If to Senior Bond Holder: ORIX Public Finance LLC
 1717 Main Street, 9th Floor
 Dallas, Texas 75201
 Attn: Kandice Stephens
 Telephone: (214) 237-2135
 Facsimile: (214) 237-2018
 Email: kstephens@orix.com

If to City: City of Austin
 PO Box 1088
 Austin, Texas 78767
 Attn: Director, Austin Water
 Telephone: (512) 974-7890
 Facsimile: (512) 370-3838
 Email: bart.jennings@austintexas.gov

With a copy to: City of Austin
PO Box 1088
Austin, Texas 78767
Attn: Law Department
Telephone: (512) 974-2268
Facsimile: (512) 974-6490
Email: Sharon.smith@austintexas.gov

If to WV Developer: Taurus of Texas
c/o Douglas H. Gilliland
9285 Huntington Square
North Richland Hills, Texas 76180
Telephone: (817) 788-1000
Facsimile: (817) 788-1670
Email: DouglasG33@aol.com

With a copy to: Talley J. Williams
Metcalf Williams, LLP
301 Congress Avenue, Suite 1075
Austin, Texas 78701
Telephone: (512) 961-8844
Facsimile: (512) 551-4943
Email: twilliams@metcalfewilliams.com

If to Escrow Agent: Nancy Grasshoff
Heritage Title Company of Austin, Inc.
401 Congress Avenue, Suite 1500
Austin, Texas 78701
Telephone: (512) 505-5000
Facsimile: (512) 505-5024
Email: ngrasshoff@heritage-title.com

11. **Consultation with Legal Counsel.** Escrow Agent may consult with its counsel or other counsel satisfactory to it concerning any question relating to its duties or responsibilities under this Escrow Agreement or otherwise in connection herewith and shall not be liable for any action taken, suffered or omitted by Escrow Agent in good faith upon the advice of such counsel. Escrow Agent may act through its officers, employees, agents and attorneys.

12. **Compensation and Reimbursement of Expenses.** For its ordinary services hereunder, Escrow Agent shall be entitled to an initial fee of \$0.00, payable concurrently with its acceptance hereof by the WV Developer, and to additional compensation as follows:

In the event that Escrow Agent performs any service not specifically provided hereinabove, or that there is any assignment or attachment of any interest in the subject matter of this escrow or any modification thereof, or that any controversy arises hereunder, or that Escrow

Agent is made a party to, or intervenes in, any litigation pertaining to this escrow or the subject matter thereof, Escrow Agent shall be reasonably compensated therefor and reimbursed for all costs and expenses occasioned thereby, and the Senior Bond Holder and WV Developer agree jointly and severally to pay the same, and to indemnify Escrow Agent against any loss, liability or expense incurred in any act or thing done by it hereunder, as permitted by law. It is understood and agreed that in the case of any controversy, Escrow Agent may refrain from acting in any manner until it receives written Escrow Agreement from all parties hereto, or Escrow Agent may interplead the subject matter of this escrow into any court of competent jurisdiction, and the act of such interpleader shall immediately relieve Escrow Agent of its duties, liabilities and responsibilities hereunder.

13. **Resignation.** Escrow Agent may resign upon ten (10) days' prior written notice to the Parties, and upon joint instructions of the Parties, shall deliver the WV Escrowed Funds to any designated substitute Escrow Agent mutually selected by the Parties. If the Parties fail to mutually designate a substitute Escrow Agent within ten (10) days after the giving of such notice, Escrow Agent may, in its sole discretion and its sole option, institute a bill of interpleader as contemplated herein.

14. **Severability.** If one or more of the provisions shall for any reason be held to be invalid, illegal or unenforceable in any respect under applicable law, such invalidity, illegality or unenforceability shall not affect any other provisions, and this Escrow Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Escrow Agreement.

15. **Assignment.** The WV Developer may not assign its rights and obligations under this Escrow Agreement (except to a Designated Successor or Assign), without the approval of the City. In the event the Senior Bond Holder sells Senior Bonds to multiple holders, then Senior Bond Holder shall notify all Parties of such sale within three (3) business days of such sale and shall designate one bond holder, in writing, to act on behalf of all bond holders and such designee shall be considered the "Senior Bond Holder" hereunder; and at any time after such designation, the Parties hereto shall provide notice (including Request Forms) to the designated Senior Bond Holder and the designee shall be entitled to act on behalf of all the bond holders, including giving notices required hereunder and submitting a Request Form where applicable.

16. **General.** The section headings contained in this Escrow Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Escrow Agreement. This Escrow Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. The terms and provisions of this Escrow Agreement constitute the entire Escrow Agreement between the parties hereto. This Escrow Agreement or any provision of the Escrow Agreement may be amended, modified, waived or terminated only by written instrument duly signed by the parties or their successors and assigns. This Escrow Agreement shall inure to the benefit of and be binding upon the parties, and their respective heirs, devisees, executors, administrators, personal representatives, successors, trustees, receivers and assigns. Nothing in this Escrow Agreement, express or implied, is intended to confer upon any other

person rights or remedies under or by reason of this Escrow Agreement. To the extent there is any conflict between this Escrow Agreement and the Restated Cost Reimbursement Agreement, the terms of the Restated Cost Reimbursement Agreement shall control as between the Parties and not Escrow Agent.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement in multiple counterparts, each of which is and shall be considered an original for all intents and purposes, effective as of the date first above written.

City:

CITY OF AUSTIN

By: _____

Name: Rudy Garza

Title: Assistant City Manager

WV Developer:

CLUB DEAL 120 WHISPER VALLEY, LIMITED
PARTNERSHIP, a Delaware limited partnership
qualified to do business in Texas

By: CD120 GP, LLC, a Delaware limited liability
company

Its: General Partner

By: _____

Douglas H. Gilliland, Manager

Senior Bond Holder:

ORIX PUBLIC FINANCE LLC, a Delaware limited
liability company

By: _____

Cliff Weiner, President & CEO

Escrow Agent:

HERITAGE TITLE COMPANY OF AUSTIN,
INC., a Texas corporation

By: _____

Name: _____

Title: _____

EXHIBIT A

(WV Property)

EXHIBIT B
(WV Bond Share)

<u>Trigger for release of WV Bond Share:</u>	<u>Amount of WV Bond Share To Be Released:</u>	<u>Beneficiary of Funds:</u>
1. Senior Bonds are retired/paid off	Entire WV Bond Share	City
2. Occurrence of a Property Owner Delinquency	Entire WV Bond Share [to be applied as set forth in Paragraph 4(b)(ii)]	Trustee
3. During any Holding Period	Entire WV Bond Share [to be applied as set forth in Paragraph 4(b)(ii)]	Trustee
4. After the expiration of a Holding Period	2/3 of WV Bond Share	Trustee
5. Funds are needed to satisfy the amount due on a Repayment Deadline (above and beyond the WV City Share)	Amount of WV Bond Share necessary to satisfy the portion of the WV First Repayment Amount due on such Repayment Deadline	City
6. After the first Repayment Deadline (i.e., October 31, 2020), funds are needed to pay the WV Maximum Outstanding Balance in full (excluding the Alternative Line portion of the WV Maximum Outstanding Balance)	Amount of WV Bond Share necessary to satisfy the WV Maximum Outstanding Balance (excluding the Alternative Line portion of the WV Maximum Outstanding Balance)	City
7. After the first Repayment Deadline (i.e., October 31, 2020), funds are needed to pay the Alternative Line portion of the WV Maximum Outstanding Balance in full	Amount of WV Bond Share necessary to satisfy the Alternative Line portion of the WV Maximum Outstanding Balance	City

The triggers are listed in order of priority. If more than one trigger exists at any given time, the higher rule in the matrix controls.

EXHIBIT B
(WV City Share)

<u>Trigger for release of WV City Share:</u>	<u>Amount of WV City Share To Be Released:</u>	<u>Beneficiary of Funds:</u>
Upon the City's payment to the Trustee of any portion of the Maximum Reimbursement Amount attributable to the WV Property	WV City Share in an amount not to exceed the WV Current Outstanding Balance	City
Third Party Sale	WV City Share in an amount not to exceed the WV Current Outstanding Balance	City
Occurrence of a Repayment Deadline	WV City Share in an amount equal to the balance due on such Repayment Deadline that remains due as of such date	City
Five (5) years after the City's acceptance of entire Alternative Line (Line 5 or both Line 6A 6B)	WV City Share – not to exceed the WV Current Outstanding Balance	City

EXHIBIT C
(Request Form)

**WHISPER VALLEY PROJECT REQUEST FORM RELATING TO
NOTICE OF THIRD PARTY SALE, REIMBURSEMENTS, AND PAYMENTS**

Date: _____, 20__

To: [City of Austin (the "City")
Heritage Title Company of Austin, Inc. (the "Escrow Agent")
ORIX Public Finance LLC ("Senior Bond Holder")
Club Deal 120 Whisper Valley, Limited Partnership (the "WV Developer")]

From: _____

Re: First Amendment to the "Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions" ("Restated Cost Reimbursement Agreement"); and Escrow Agreement by and among the City, Escrow Agent, Senior Bond Holder, and WV Developer dated _____, 2011 ("WV Escrow Agreement")

PURPOSE OF NOTICE (check one)

____ 1. **Notice of Third Party Sale (Escrow Agent to complete):**

Closing Date for Third Party Sale: _____, 20__

Subject Property: See Exhibit "A" attached

A. WV Bond Share of SSA: \$ _____

B. WV City Share of SSA: \$ _____

C. Total SSA for Third Party Sale: \$ _____ (A + B)

____ 2. **Notice of Additional Reimbursement Amount for WV Project Paid to Trustee (City to complete):**

Date of Additional Reimbursement to Trustee: _____, 20__

D. Additional Reimbursement Amount: \$ _____

____ 3. **Notice of Repayment Deadline (Escrow Agent to complete):**

Date of Repayment Deadline: _____, 20__

E. Amount Due on Repayment Deadline: \$ _____

____ 4. **Notice of Property Owner Delinquency Under Senior Bonds (Senior Bond Holder to complete):**

Date of Property Owner Delinquency: _____, 20__

F. Delinquency Amount under Senior Bonds: \$ _____

____ 5. **Notice that SSA No Longer Required (WV Developer or Escrow Agent to complete)**

Balance in WV Escrow Account equals WV Maximum Outstanding Balance. (I = Q)

____ 6. **Notice that Senior Bonds Are No Longer Outstanding (Senior Bond Holder to complete)**

Date Senior Bonds retired or paid in full: _____, 20__

BALANCE IN ESCROW ACCOUNT (Escrow Agent to complete)

(amounts after Third Party Sale, if applicable, and prior to disbursement)

- G. WV Bond Share in WV Escrow Account: \$ _____ (prior balance + A)
H. WV City Share in WV Escrow Account: \$ _____ (prior balance + B)
I. Total Amount in WV Escrow Account: \$ _____ (G + H)

DISBURSEMENT OF ESCROWED FUNDS (Requesting Party to complete; Escrow Agent to verify)

- J. Portion of WV Bond Share to release to City: \$ _____
K. Portion of WV Bond Share to release to Trustee: \$ _____
(only if Property Owner Delinquency has occurred and Holding Period in effect)
L. Portion of WV City Share to release to City: \$ _____

BALANCES AFTER TRANSACTION AND DISBURSEMENT (Escrow Agent to complete):

- M. Maximum Reimbursement Amount
(attributable to WV Project): \$ _____
N. Portion of Maximum Reimbursement Amount paid
to Trustee to date (attributable to WV Project): \$ _____
O. WV First Repayment Amount and Alternative Line
Repayment Amount repaid to date: \$ _____
P. WV Current Outstanding Balance: \$ _____ (N - O)
Q. WV Maximum Outstanding Balance: \$ _____ (M - O)
R. Remaining WV Bond Share in WV Escrow Account: \$ _____ (G - J - K)
S. Remaining WV City Share in WV Escrow Account: \$ _____ (H - L)
Total Amount in WV Escrow Account: \$ _____ (R + S)
(not to exceed WV Maximum Outstanding Balance)

RELEASE OF PROPERTY (if applicable):

Property to be released from Transfer Restriction Notice: See Exhibit "B" attached

By their signature below, the parties hereto acknowledge that (i) to the parties' knowledge, the amounts set forth above are accurate as of the date of this Notice, (ii) payments disbursed to the City shall be made or transferred to the Austin Water Utility, and (iii) the Escrow Agent shall have the right to release the WV Escrowed Funds in the amount and to the parties as set forth in the WV Escrow Agreement.

If Exhibit "B" is attached hereto, then by their signature below, the parties hereto acknowledge that execution of this Request Form, in accordance with the Restated Cost Reimbursement Agreement, shall be considered approval for the WV Developer to execute and record a Release in the Official Public Records of Travis County, Texas releasing the property described in Exhibit "B" from the Notice Regarding Transfer Restrictions and Requirements recorded as Document No. _____ in the Official Public Records of Travis County,

Texas.

[SIGNATURE PAGE FOR WHISPER VALLEY PROJECT REQUEST FORM]

WV Developer:

CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP,
a Delaware limited partnership qualified to do business in Texas

By: CD120 GP, LLC, a Delaware limited liability company, its General Partner

By: _____
Douglas H. Gilliland, Manager

Date: _____, 20__

City:

CITY OF AUSTIN

By: _____

Name: _____

Title: _____

Date: _____, 20__

Senior Bond Holder:

ORIX Public Finance LLC, a Delaware limited liability company

By: _____
Cliff Weiner, President & CEO

Date: _____, 20__

Escrow Agent:

HERITAGE TITLE COMPANY OF AUSTIN, INC., a Texas corporation

By: _____

Name: _____

Title: _____

Date: _____, 20__

EXHIBIT G

CONTINUING DISCLOSURE AGREEMENT

**CITY OF AUSTIN, TEXAS
SPECIAL ASSESSMENT REVENUE BONDS, SUBORDINATE SERIES 2011
(INDIAN HILLS PUBLIC IMPROVEMENT DISTRICT)**

CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement dated as of November 1, 2011 (this "Disclosure Agreement") is executed and delivered by and among the City of Austin, Texas (the "Issuer") and Deutsche Bank National Trust Company (the "Trustee") and Club Deal 116 Indian Hills, TX, Limited Partnership, a Delaware limited partnership (the "Developer") with respect to the Issuer's Special Assessment Revenue Bonds, Subordinate Series 2011 (Indian Hills Public Improvement District) (the "Bonds"). The Issuer, the Trustee and the Developer covenant and agree as follows:

SECTION 1. Purpose of the Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the Issuer, the Trustee and the Developer for the benefit of the Owners and beneficial owners of the Bonds.

SECTION 2. Definitions. In addition to the definitions set forth in the Indenture of Trust dated as of November 1, 2011 (the "Indenture"), which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

"Annual Bond Disclosure Report" shall mean any Annual Bond Disclosure Report provided by the Issuer pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

"Disclosure Representative" shall mean the City Treasurer of the Issuer and the general partner of the Developer or his or her designee, or such other officer or employee as the Issuer or the Developer, as applicable, may designate in writing to the Trustee from time to time.

"Dissemination Agent" shall mean the Trustee, or any successor Dissemination Agent designated in writing by the Issuer and which has filed with the Trustee a written acceptance of such designation.

"District" means the Indian Hills Public Improvement District established by the Issuer and related to the Bonds.

"Fiscal Year" means the calendar year from October 1 through September 30.

"Listed Events" shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

"MSRB" means the Municipal Securities Rulemaking Board.

“Owner” means the registered owner of any Bonds.

“Participating Underwriter” shall mean Piper Jaffray & Co. and its successors and assigns.

“Responsible Officer” shall mean, in the case of the Trustee, the officer or officers specifically administering the Indenture.

“Rule” shall mean Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“Tax-exempt” shall mean that interest on the Bonds is excluded from gross income for federal income tax purposes, whether or not such interest is includable as an item of tax preference or otherwise includable directly or indirectly for purposes of calculating any other tax liability, including any alternative minimum tax liability.

“Trustee” shall mean Deutsche Bank National Trust Company, or any successor trustee pursuant to the Indenture.

SECTION 3. Provision of Annual Bond Disclosure Reports.

(a) The Issuer and the Developer shall cause and hereby direct the Dissemination Agent to, not later than six months after the end of the Issuer’s Fiscal Year, commencing with the Fiscal Year ending in 2011, provide to the MSRB, in the electronic or other form required by the MSRB, an Annual Bond Disclosure Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. In each case, the Annual Bond Disclosure Report may be submitted as single document or as separate documents comprising a package and may include by reference other information as provided in Section 4 of this Disclosure Agreement; *provided* that the audited financial statements of the Issuer, if prepared and when available, may be submitted separately from the balance of the Annual Bond Disclosure Report, and later than the date required in this paragraph for the filing of the Annual Bond Disclosure Report if audited financial statements are not available by that date and unaudited financial statements are submitted not later than six months after the end of the Issuer’s Fiscal Year. If the Issuer’s Fiscal Year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(d). All documents provided to the MSRB shall be accompanied by identifying information as prescribed by the MSRB.

(b) Not later than ten (10) Business Days prior to the date specified in subsection (a) for providing the Annual Bond Disclosure Report to the MSRB, the Dissemination Agent shall provide the Annual Bond Disclosure Report to the Issuer, the Developer and the Trustee. If by the date specified in this subsection 3(b), the Trustee has not received a copy of the Annual Bond Disclosure Report, the Trustee shall contact the Issuer, the Developer and the Dissemination Agent to determine if the Issuer and the Developer are intending to comply with subsection (a).

(c) If the Trustee is able to verify that an Annual Bond Disclosure Report has not been provided to the MSRB by the date required in subsection (a), the Trustee shall send a notice to the MSRB in substantially the form attached as Exhibit A.

(d) The Dissemination Agent shall:

(i) on behalf of the Issuer prepare and file the Annual Bond Disclosure Report (excluding the audited financial statements of the Issuer, if any, which shall be filed by the Dissemination Agent upon receipt from the Issuer) containing or incorporating by reference the information set forth in Section 4 hereof; and

(ii) file a report with the Issuer, the Developer and (if the Dissemination Agent is not the Trustee) the Trustee certifying that the Annual Bond Disclosure Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided and that it was filed with the MSRB.

SECTION 4. Content of Annual Bond Disclosure Reports. The Annual Bond Disclosure Report for the Bonds shall contain or incorporate by reference, and the Issuer and the Developer agree to provide or cause to be provided to the Dissemination Agent, the following:

(a) If prepared and when available, the audited financial statements of the Issuer for the most recently ended Fiscal Year, prepared in accordance with generally accepted accounting principles applicable from time to time to the Issuer. If audited financial statements of the Issuer are not available by the date required by Section 3(a), the Issuer shall provide unaudited financial statements not later than such date.

(b) Tables setting forth the following information, as of the end of such Fiscal Year:

(i) For the Bonds, the maturity date or dates, the interest rate or rates, the original aggregate principal amount and principal amount remaining Outstanding.

(ii) The amounts in the funds and accounts securing the Bonds and a description of the related investments.

(c) Updates to the information in the final Service and Assessment Plan ("SAP").

(d) Listing of any District property or property owners representing more than five percent (5%) of the levy of Assessments, the amount of the levy of Assessments against such landowners, and the percentage of such Assessments relative to the entire levy of Assessments within the District, all as of the previous October 1.

(e) The result of any foreclosure sales of assessed property within the District.

(f) Any changes to the identity of the Administrator.

(g) The total amount of Assessments on all property subject to Assessments by the Issuer as of the first and last days of such Fiscal Year, together with the amount of Assessments prepaid during such Fiscal Year.

(h) The amount of Annual Installments levied during such Fiscal Year, and assessed valuation and Assessments for all parcels within the District, as of the previous October 1.

(i) The amount of Assessments collected from the property owners during such Fiscal Year.

(j) The amount of Assessment delinquencies greater than six months, one year and two years, and, if delinquencies amount to more than five percent (5%) of aggregate amount of Assessments due in any year, a list of property owners whose Assessments are delinquent.

(k) The amount of delinquent Assessments by Fiscal Year: (1) which are subject to institution of foreclosure proceedings (but as to which such proceedings have not been instituted); (2) which are currently subject to foreclosure proceeding which have not been concluded; (3) which have been reduced to judgment but not collected; and (4) which have been reduced to judgment and collected and the results of any foreclosure sales of assessed property within the District.

(l) The principal and interest paid on the Bonds during the most recent Fiscal Year and the minimum scheduled principal and interest required to be paid on the Bonds in the next Fiscal Year;

(m) Any changes to the methodology for levying the Assessments in the District since the report of the most recent Fiscal Year;

(n) Any changes to the land use designation for the property in the District that might negatively impact its development for those purposes identified in the final SAP, as the same may be amended and supplemental from time to time.

(o) A description of any amendment to this Disclosure Agreement and a copy of any restatements to the Issuer's financial statements.

See Exhibit B hereto for a form for submitting the information set forth in the preceding paragraph.

Any or all of the items listed above may be included by specific reference to other documents, including disclosure documents of debt issues of the Issuer, which have been submitted to and are publicly accessible from the MSRB. If the document included by reference is a final offering document, it must be available from the MSRB. The Issuer shall clearly identify each such other document so included by reference.

SECTION 5. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 5, each of the following is a Listed Event with respect to the Bonds:

1. Principal and interest payment delinquencies.
2. Non-payment related defaults.
3. Modifications to rights of Bondholders.
4. Optional or unscheduled redemptions or repayments of the Bonds.

5. Defeasances.
6. Rating changes.
7. Unscheduled draws on debt service reserves reflecting financial difficulties.
8. Unscheduled draws on credit enhancements reflecting financial difficulties.
9. Substitution of credit or liquidity providers, or their failure to perform.
10. Release, substitution, or sale of property securing repayment of the Bonds.

11. Adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds.

12. Tender offers to any Bondholder.

13. Bankruptcy, insolvency, receivership or similar event of the Issuer or the Developer.

14. The consummation of a merger, consolidation, or acquisition of the Issuer or the Developer, or the sale of all or substantially all of the assets of the Issuer or the Developer, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.

15. Appointment of a successor or additional trustee under the Indenture or the change of name of a trustee.

Whenever the Issuer or the Developer obtains knowledge of the occurrence of a Listed Event under number 1, 5, 6, 7, 8, 9, 11, 12, 13 or 14 above, it shall promptly notify the Trustee in writing and the Issuer shall direct the Dissemination Agent to immediately file a notice of such occurrence with the MSRB. Such notice is required to be filed within ten (10) Business Days of the occurrence of such Listed Event.

Whenever the Issuer or the Developer obtains knowledge of any other Listed Event (under number 2, 3, 4, 10, or 15 above), it shall promptly determine if such event would constitute material information to the Owners of the Bonds. If the Issuer determines that knowledge of the event would be material, it shall immediately notify the Developer, the Trustee and the Dissemination Agent in writing and shall direct the Dissemination Agent to immediately file a notice of such occurrence with the MSRB. Such notice is required to be filed within ten (10) Business Days of the occurrence of such Listed Event.

Any notice under the two (2) preceding paragraphs shall be accompanied with the text of the disclosure that the Issuer desires to make, the written authorization of the Issuer for the Dissemination Agent to disseminate such information as provided herein, and the date the Issuer desires for the

Dissemination Agent to disseminate the information (which date shall not be more than ten (10) Business Days after the occurrence of the Listed Event).

In all cases, the Issuer shall have the sole responsibility for the content, design and other elements comprising substantive contents of all disclosures.

(b) The Trustee shall, within one (1) Business Day of a Responsible Officer obtaining actual knowledge of the occurrence of any Listed Event with respect to the Bonds, notify the Disclosure Representative of such Listed Event. It is agreed and understood that the duty to make the disclosures herein is that of the Issuer or the Developer and not that of the Trustee or the Dissemination Agent. It is agreed and understood that the Trustee has agreed to give the foregoing notice to the Issuer and the Developer as an accommodation to assist it in monitoring the occurrence of such event, but is under no obligation to investigate whether any such event has occurred. As used above, "actual knowledge" means the actual fact or statement of knowing, without a duty to make any investigation with respect thereto. In no event shall the Trustee be liable in damages or in tort to the Participating Underwriter, the Issuer, the Developer or any Bondholder or beneficial owner of any interests in the Bonds as a result of its failure to give the foregoing notice or to give such notice in a timely fashion.

(c) If in response to a request under subsection (b), the Issuer determines that the Listed Event under number 2, 3, 4, 10, or 15 of subparagraph (a) above is not material under applicable federal securities laws, the Issuer shall promptly notify the Developer, the Dissemination Agent and the Trustee in writing and instruct the Dissemination Agent not to report the occurrence pursuant to subsection (d).

(d) If the Dissemination Agent has been instructed by the Issuer to report the occurrence of a Listed Event, the Dissemination Agent shall immediately file a notice of such occurrence with the MSRB.

SECTION 6. Quarterly Reporting Obligations of the Developer. The Developer shall provide, or cause to provide at its cost and expense, to the Administrator and the Dissemination Agent (if different from the Administrator) the information described in this Section 6, and the Dissemination Agent shall, upon receipt from the Developer or its designee, promptly provide such information to the MSRB. The Developer shall provide, or cause to be provided, the information described in paragraphs (i) through (vii) below during the period from the delivery of the Bonds until the later of December 31, 2015 or until such time as the Developer no longer is responsible for the payment of Assessments equal to at least 15% of the annual debt service of the Bonds for any year. Thereafter, the Developer shall provide, or cause to be provided, the information described in paragraph (iv) below until its obligation under this Disclosure Agreement terminates. Such information shall be provided not later than thirty (30) days after each January 1, April 1, July 1 and October 1 (beginning January 1, 2012), and shall include information concerning:

(i) Statement with respect to the Developer or any affiliate of the Developer as to the status of development loans and any permanent financing with respect to any development undertaken by the Developer in the District not financed with Bond proceeds, including loan balance, interest rate, existence of deeds of trust or other similar encumbrances against the property within the District, existence of any default and remaining term;

(ii) Statement as to available funds to complete the District development under construction as contemplated (both Bond financed and non-Bond financed development undertaken by the Developer or any affiliate of the Developer);

(iii) Status of lot sales by type and pricing, as well as anticipated future absorption sales;

(iv) Update of lot ownership composition as set forth within the SAP as well as the number of homes which are completed and/or under construction;

(v) A statement as to material changes, if any, in the form, organization or controlling ownership of the Developer;

(vi) The status of any governmental approvals (other than customary home building permits required after a delivery of a finished lot) required for completion of improvements within the District; and

(vii) Any information regarding the Improvement Projects or other information as may be reasonably requested by the Administrator relating to the ability of the Developer or any affiliate of the Developer to fulfill its obligations under the Indenture or the SAP.

Additionally, the Developer or the Issuer, as applicable, shall provide or cause to be provided filings by the construction manager (who shall be retained by the Developer on a contractual basis or, if there is a failure of the Developer to complete the Improvement Projects and the Issuer assumes construction management, by the Issuer) as follows:

1. Design-Engineering and Construction Project Funds

For each of the Improvement Projects the construction manager will establish an accounting and budgeting system that will show:

- (viii) Total expected design and engineering costs;
- (ix) Total expected construction budget;
- (x) Construction budget allocated to progress "Milestones;"
- (xi) Expected design completion date;
- (xii) Forecast "bidding" schedule;
- (xiii) Forecast commencement of construction;
- (xiv) Forecast construction "Milestones" of progress;
- (xv) Forecast completion date; and

(xvi) Forecast Issuer acceptance date.

The construction manager shall prepare, within 90 days of the Bond closing, a schedule reflecting the nine points listed above for each of the primary Improvement Projects to be funded by the Bond proceeds, including:

1. Water Line 1; and
2. Decker Road.

Monthly design and construction expenditure progress reports, reflecting the nine points listed above, will be summarized on a quarterly basis and sent to the Trustee, reflecting the progress and conformance with the overall project budget. These quarterly reports will be filed with the Dissemination Agent. Budget overruns in excess of \$250,000 or delays of greater than 60 days will be highlighted and explained and the Developer shall include a plan to remedy the situation.

SECTION 7. Event Reporting Obligations of Developer. Whenever the Developer or an affiliate of the Developer obtains actual knowledge of the occurrence of one or more of the following events, the Developer shall notify, or cause such affiliate to notify, the Administrator and Dissemination Agent (if different from the Administrator) of such occurrences and the Dissemination Agent shall immediately report and file a notice of such event in the manner as provided in Section 5 for the Listed Events specified therein:

(i) Failure to pay any real property taxes or Assessments levied within the District on a parcel owned by the Developer, or an affiliate of the Developer

(ii) Material damage to or destruction of any development or improvements within the District;

(iii) Material default by the Developer or any affiliate of the Developer on any loan with respect to the development or permanent financing of District development undertaken by the Developer or any affiliate of the Developer;

(iv) Material default by the Developer or any affiliate of the Developer on any loan secured by property within the District owned by the Developer or any affiliate of the Developer;

(v) The bankruptcy filing of the Developer or of any affiliate of the Developer or any determination that the Developer or any affiliate of the Developer is unable to pay its debts as they become due;

(vi) The filing of any lawsuit with claim for damage, in excess of \$1,000,000 against the Developer or any affiliate of the Developer which may adversely affect the completion of the District development or litigation which would materially adversely affect the financial condition of the Developer or any affiliate of the Developer; and

(vii) Any change in the legal structure, chief executive officer or controlling ownership of the Developer or any affiliate of the Developer.

For purposes of Section 6 and 7, the term “affiliate” shall mean an entity that owns property within the District and is controlled by, controls, or is under common control of the Developer.

SECTION 8. Termination of Reporting Obligations. The Issuer’s and the Developer’s obligations under this Disclosure Agreement with respect to the Bonds shall terminate upon the legal defeasance, prior redemption or payment in full of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the Issuer shall give notice of such termination in the same manner as for a Listed Event with respect to such series under Section 5(d).

SECTION 9. Dissemination Agent. The Issuer may, from time to time, appoint or engage a Dissemination Agent or successor Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge such Dissemination Agent, with or without appointing a successor Dissemination Agent. If at any time there is not any other designated Dissemination Agent, the Issuer shall be the Dissemination Agent. The initial Dissemination Agent appointed hereunder shall be the Deutsche Bank National Trust Company.

SECTION 10. Amendment; Waiver. Notwithstanding any other provisions of this Disclosure Agreement, the Issuer, the Developer and the Trustee may amend this Disclosure Agreement with consent of Dissemination Agent (and the Trustee shall not unreasonably withhold its consent to any amendment so requested by the Issuer and the Developer), and any provision of this Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 4, or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the delivery of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (i) is approved by the Owners of the Bonds in the same manner as provided in the Indenture for amendments to the Indenture with the consent of Owners, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Owners or beneficial owners of the Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the Issuer shall describe such amendment in the next related Annual Bond Disclosure Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Issuer. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5(d), and (ii) the Annual Bond Disclosure Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting

principles. No amendment which adversely affects the Trustee may be made without its consent (which consent will not be unreasonably withheld or delayed).

SECTION 11. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Bond Disclosure Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Issuer chooses to include any information in any Annual Bond Disclosure Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the Issuer shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Bond Disclosure Report or notice of occurrence of a Listed Event.

SECTION 12. Default. In the event of a failure of the Issuer, the Developer or the Trustee to comply with any provision of this Disclosure Agreement, the Dissemination Agent may (and, at the request of any Participating Underwriter or the Owners of at least 25% aggregate principal amount of Outstanding Bonds, shall, upon being indemnified to its satisfaction as provided in the Indenture), or any Owner or beneficial owner of the Bonds may, take such actions as may be necessary and appropriate to cause the Issuer, the Developer or the Trustee, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture with respect to the Bonds, and the sole remedy under this Disclosure Agreement in the event of any failure of the Issuer, the Developer or the Trustee to comply with this Disclosure Agreement shall be an action to compel performance.

SECTION 13. Duties, Immunities and Liabilities of Trustee and Dissemination Agent. Neither the Trustee nor the Dissemination Agent shall have any duty with respect to the content of any disclosures made pursuant to the terms hereof. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement, and no implied covenants shall be read into this Disclosure Agreement with respect to the Dissemination Agent or the Trustee. To the extent permitted by law, the Issuer and the Developer agree to hold harmless the Dissemination Agent, its officers, directors, employees and agents, against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the Issuer and the Developer under this Section shall survive resignation or removal of the Dissemination Agent and payment in full of the Bonds. Nothing in this Disclosure Agreement shall be construed to mean or to imply that either the Trustee or the Dissemination Agent is an "obligated person" under the Rule. Neither the Trustee nor the Dissemination Agent is acting in a fiduciary capacity in connection with the performance of their respective obligations hereunder. The fact that the Trustee may have a banking relationship with the Issuer or the Developer or any person with whom the Issuer or the Developer contracts in connection with the transaction described in the Indenture, apart from the relationship created by the Indenture or this Disclosure Agreement, shall not be construed to mean that the Trustee or a Responsible Officer thereof has actual knowledge of any event described in Section 5 above, except as may be provided by written notice to the Trustee pursuant to this Disclosure Agreement or the Indenture. Neither the Trustee nor the Dissemination Agent shall in any event incur any liability with respect to (i) any action taken or omitted to be taken in good faith upon advice of legal counsel given with respect to any question relating to duties and responsibilities of the Trustee

hereunder, or (ii) any action taken or omitted to be taken in reliance upon any document delivered to them and believed to be genuine and to have been signed or presented by the proper party or parties.

The Trustee and the Dissemination Agent may, from time to time, consult with legal counsel of their own choosing in the event of any disagreement or controversy, or question or doubt as to the construction of any of the provisions hereof or their respective duties hereunder, and neither of them shall incur any liability and shall be fully protected in acting in good faith upon the advice of such legal counsel. UNDER NO CIRCUMSTANCES SHALL THE DISSEMINATION AGENT, THE TRUSTEE, THE DEVELOPER, OR THE ISSUER BE LIABLE TO THE OWNER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE ISSUER, THE DEVELOPER, THE DISSEMINATION AGENT OR THE TRUSTEE, RESPECTIVELY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS DISCLOSURE AGREEMENT, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE. THE TRUSTEE IS UNDER NO OBLIGATION NOR IS IT REQUIRED TO BRING SUCH AN ACTION.

SECTION 14. Assessment Timeline. The basic expected timeline for the collection of Assessments and the anticipated procedures for pursuing the collection of delinquent Assessments is set forth in Exhibit C which is intended to illustrate the general procedures expected to be followed in enforcing the payment of delinquent Assessments.

SECTION 15. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Issuer, the Developer, the Trustee, the Dissemination Agent, the Participating Underwriter and the Owners and the beneficial owners from time to time of the Bonds, and shall create no rights in any other person or entity. Nothing in this Disclosure Agreement is intended or shall act to disclaim, waive or otherwise limit the duties of the Issuer under federal and state securities laws.

SECTION 16. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[remainder of page left blank intentionally]

CITY OF AUSTIN, TEXAS

By: _____
MARC OTT, City Manager

DEUTSCHE BANK NATIONAL TRUST
COMPANY
(as Trustee and Dissemination Agent)

By: _____
Authorized Officer

CLUB DEAL 116 INDIAN HILLS, TX
LIMITED PARTNERSHIP, a Delaware Limited
Partnership qualified to do business in Texas

By: CD 116 Indian Hills TX, LLC, a Delaware
limited liability company qualified to do business
in Texas

By: _____

EXHIBIT A

**NOTICE TO MSRB OF FAILURE TO FILE
ANNUAL BOND DISCLOSURE REPORT**

Name of Issuer: City of Austin, Texas

Name of Bond Issue: Special Assessment Revenue Bonds, Subordinate Series 2011 (Indian Hills Public Improvement District)

Date of Delivery: _____, 2011

NOTICE IS HEREBY GIVEN that the City of Austin, Texas has not provided an Annual Bond Disclosure Report with respect to the above-named bonds as required by the Continuing Disclosure Agreement dated as of November 1, 2011, between the Issuer, Club Deal 116 Indian Hills, TX, Limited Partnership, a Delaware limited partnership (the "Developer"), and Deutsche Bank National Trust Company, as trustee. The Issuer anticipates that the Annual Bond Disclosure Report will be filed by _____.

Dated: _____

_____, on behalf of the City of
Austin, Texas

By: _____

Title: _____

cc: City of Austin, Texas

EXHIBIT B

CITY OF AUSTIN, TEXAS SPECIAL ASSESSMENT REVENUE BONDS, SUBORDINATE SERIES 2011 (INDIAN HILLS PUBLIC IMPROVEMENT DISTRICT)

ANNUAL BOND DISCLOSURE REPORT*

Delivery Date: _____, 20__

TRUSTEE

Name: _____

Address: _____

City: _____

Telephone: _____

Contact Person: _____

BONDS OUTSTANDING

CUSIP Number	Maturity Date	Interest Rate	Original Principal Amount	Outstanding Principal Amount	Accrued Interest

INVESTMENTS

Fund/ Account Name	Investment Type	Principal Balance	Accrued Interest	Investment Rate	Maturity Date

*Excluding Audited Financial Statements of the Issuer

ASSETS & LIABILITIES OF PLEDGED TRUST ESTATE

Bonds (Principal Balance)	_____
Funds and Accounts [list]	_____
Accrued Interest (if any)	_____
TOTAL ASSETS	_____

LIABILITIES

Outstanding Bond Principal	_____
Accrued Interest (if any)	_____
Outstanding Program Expenses (if any)	_____
TOTAL LIABILITIES	_____

EQUITY

Assets Less Liabilities	_____
Parity Ratio	_____

Form of Accounting ☐ Cash ☐ Accrual ☐ Modified
Accrual

ITEMS REQUIRED BY SECTION 4(c) - (p)
[Insert a line item for each applicable listing]

EXHIBIT C

BASIC TIMELINE FOR ASSESSMENT COLLECTIONS AND PURSUIT OF DELINQUENCIES

<u>Date:</u>	<u>Delinquency Clock:</u>	<u>Activity</u>
Prior to February 1		Assessments are due
February 1	1	Issuer to have received Assessment payments
		Assessments Delinquent if not received
February 5	5	Issuer to forward payments to Trustee as soon as possible after received
February 15	15	Issuer and/or Administrator should be aware of actual and specific delinquencies
February 20	20	Issuer should be aware if Reserve Fund needs to be utilized for debt service payment on March 1. If there is to be a shortfall, the Trustee should be immediately notified and EMMA should be notified.

Issuer should also be aware if, based on collections; there will be a shortfall for September payment.

Issuer and/or Administrator should determine if previously collected surplus funds plus actual collections will be fully adequate for debt service in March and September.

At this point, if total delinquencies are under 5% and if there is adequate funding for March and September payment, no further action is anticipated for collection of Assessments except that Administrator, working with the City Attorney or an appropriate designee, will send supplemental billings/demand letters at least monthly to all delinquent property owners. **For properties delinquent by more than one year or if the delinquency exceeds \$10,000 the matter will be referred for commencement of foreclosure.**

If there are over 5% delinquencies or if there is inadequate funding in the Pledged Revenue Fund for transfer to the Principal and Interest Account of such amounts as shall be required for the full March and September payment, the collection-foreclosure procedure will proceed against all delinquent properties.

March 1

30

Bond interest payment due from January collections.

Reserve Fund payment to Bond Fund may well be required if Assessments are below approximately 50% collection rate

EMMA to be notified if Reserve Fund utilized

for debt service.

Use of Reserve Fund for debt service payment should trigger commencement of foreclosure on delinquent properties.

March 5	35	Issuer to notify Trustee for disclosure to EMMA of all delinquencies.
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March 5	35	If any property owner with ownership of property responsible for more than \$10,000 of the Assessments is delinquent or if a total of delinquencies is over 5%, or if it is expected that Reserve Fund moneys will need to be utilized for either the March or September bond payments, the City Treasurer shall work with City Attorney's office, or the appropriate designee, to commence the collection process for all delinquent Assessments.
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April 15	75	Issuer shall notify Trustee (Trustee shall notify EMMA) of the plan of collections and foreclosure.
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May 1	90	Preliminary Foreclosure activity commences with final demand letters and commencement of actual foreclosure analysis including ordering of title reports, etc.
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If Trustee has not received Foreclosure Schedule and Plan of Collections, Trustee to request same from Issuer.

May 10	100	If Issuer has not provided Trustee with Foreclosure Schedule and Plan of Collections, bondholders (via EMMA) to be notified that foreclosure has not commenced and Trustee to again request that Issuer commence foreclosure or provide plan for collection.
June 1	120	The designated lawyers or law firm will be preparing the formal foreclosure documents and will provide periodic updates to the Trustee for dissemination to those bondholders who have requested to be notified of collections progress. The goal for the foreclosure actions is a filing by no later than June 30 (day 149).
June 30	149	Foreclosure action to be filed with the Courts.
July 1	150	Trustee notified of Foreclosure filing status and notifies EMMA and bondholders.
July 15	160	If bondholders and Trustee have not been notified of a foreclosure action, Trustee will notify bondholders (via EMMA) and Issuer that it is appropriate to file action.

A committee of not less than 25% of the bondholders may request a meeting with the City Treasurer to discuss the Issuer's actions in pursuing the repayment of any delinquencies. This would also occur after day 30 if it is apparent that a Reserve Fund draw is required. Further, if delinquencies exceed 5%, bondholders may also request a meeting with the Issuer at any time to discuss the Issuer's plan and progress on collection and foreclosure activity. If the Issuer is not diligently proceeding with the foreclosure process, the bondholders may seek an action for mandamus or specific performance to direct the Issuer to pursue the collections of delinquent Assessments.